

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

113328

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. —

ALAN C. MAY ET AL. APPELLANTS

v.

CHARLES E. WILSON, SECRETARY OF DEFENSE, ET AL. APPELLEES

APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT
COURT, DISTRICT OF COLUMBIA

United States Court of Appeals
For the

District of Columbia Circuit

FILED JUN 12 1 1956

Joseph W. Stewart

CLERK

CONTENTS

	Transcript Page	Appendix Page
1. Complaint.....	4	1
2. Motion by Plaintiffs for Preliminary Injunction or Temporary Stay Order.....	5	30
3. Affidavit of Urban A. Lavery in Support of Plaintiffs' Motion for Preliminary Injunction or Temporary Stay Order.....	7	31
4. Affidavit of Howard S. Levie.....	21	33
Exhibit 1.....	Supp Rec	44
Exhibit 2.....	Supp Rec	47
5. Affidavit of Alan B. Todd.....	31	60
6. Affidavit of C. Robert Bard.....	99	61
7. Affidavit of Shelton B. Biles.....	102	64
8. Second Affidavit of Shelton B. Biles.....	122	68
9. Third Affidavit of Shelton B. Biles.....	123	70
10. Affidavit of Richard Reichmann.....	110	73
11. Affidavit of John J. Douglass.....	111	74
12. Affidavit of Robert G. Tallman.....	113	76
Exhibit 1, Reynolds.....	115	78
Exhibit 2, Nordyke.....	116	78
Exhibit 3, McKenzie.....	117	79
13. Affidavit of Victor A. DeFiori.....	118	79
Exhibit 1.....	119	80
14. Affidavit of Ko Takenaka.....	120	81
15. Certified Copy of Memorandum for the President Dated February 27, 1952.....	34	84
16. Motion to Strike the Whole Complaint.....	91	85
17. Oral Opinion of the District Court Denying Plaintiffs' Motion for Preliminary Injunction or Temporary Stay Order, Dated February 2, 1956.....	1	86
18. Findings of Fact and Conclusions of Law of the District Court on Plaintiffs' Motion for Preliminary Injunction or a Temporary Stay Order.....	151	86
19. Order of the District Court Denying Plaintiff's Motion for Preliminary Injunction or Temporary Stay Order.....	150	90
20. Stipulation Dated February 23, 1956.....	157	91
21. Amended Complaint.....	159	92
22. Answer.....	165	97
23. Motion by Defendants for Summary Judgment.....	173	103
24. Order of the District Court Granting Defendants' Motion for Summary Judgment.....	175	103

II

	Transcript Page	Appendix Page
25. Motion of Plaintiffs for Leave to Prosecute Appeal In Forma Pauperis.....	176	104
26. Affidavit of Alan C. May.....	178	104
27. Affidavit of Walter R. McKenzie.....	180	106
28. Affidavit of Jesse Nordyke.....	182	108
29. Affidavit of Kenneth J. Reynolds.....	184	109
30. Order of the District Court Granting Leave to Prosecute Appeal in Forma Pauperis Dated March 23, 1956....	186	111
31. Notice of Appeal.....	187	112

In the United States District Court for the District of Columbia

No. 128-56

ALAN C. MAY, PRIVATE, U. S. A., WALTER R. MCKENZIE,
CORPORAL, U. S. A., KENNETH J. REYNOLDS, PRIVATE, U. S. A.,
JESSE NORDYKE, PRIVATE, U. S. A., PLAINTIFFS

v.

HON. CHARLES E. WILSON, SECRETARY OF DEFENSE OF THE
UNITED STATES, AND HON. WILBER M. BRUCKER, SECRETARY
OF THE ARMY OF THE UNITED STATES, DEFENDANTS

Complaint for Declaratory Judgment and Other Relief

(Filed January 12, 1956)

Come now the above named Plaintiffs Alan C. May, Private, U. S. A., Walter R. McKenzie, Corporal, U. S. A., Kenneth J. Reynolds, Private, U. S. A., and Jesse Nordyke, Private, U. S. A. (each of whom is a soldier in the Army of the United States serving in Japan), by their Attorneys, Urban A. Lavery, of Chicago, Ill., and William P. MacCracken, Jr., of Washington, D. C., and respectfully allege, and show unto the court as follows:

PART I. AS TO NATURE OF THE ACTION, JURISDICTION, ETC.

NATURE OF ACTION

1. This is a civil action seeking a Declaration of the Constitutional rights of the above named Plaintiffs (and also of all the other members of the Armed Forces of the United States serving in Japan who are similarly situated), as authorized and permitted by the applicable statutes for that purpose herein-after cited. Under the provisions of those statutes no sum or value of the matter in controversy is required to be stated in this Complaint.

(1)

JURISDICTIONAL STATUTES

2. This Court has original jurisdiction in the premises, and these Plaintiffs have a right to bring this action, under each of the following Acts of Congress:

a) The Declaratory Judgment Act of the United States the applicable provisions of that statute being set out in the margin for the convenience of the Court.¹

b) The Administrative Procedure Act of the United States of 1946, and particularly the provisions thereof concerned with "*Judicial Review of Agency action*", the applicable provisions of that statute likewise being set out hereafter in the margin of this Complaint at pages 19 and 20, for the convenience of the Court.

JURISDICTIONAL FACTS AS TO PLAINTIFFS

3. The jurisdictional facts as to the Plaintiffs and each of them which give them the right to bring this action are as follows:

a) The Plaintiffs, and each of them, are native born adult citizens of the United States, who have been drafted into the Army and have been involuntarily sent to Japan where they are now serving as soldiers in the Armed Forces.

b) The Plaintiffs, and each of them, are currently being compelled involuntarily, by the Defendants above

¹ The provisions of the Declaratory Judgment Act (Title 28, U. S. C. A., Secs. 2201, 2202) read as follows:

"Chapter 151—Declaratory Judgments

"Sec. 2201. Creation of remedy

"In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

"Sec. 2202. Further Relief

"Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

named (acting through certain subordinate Officers of the Army who in turn are under the control and direction of the Defendants) to appear before and stand trial before the Criminal Courts of Japan, in the City of Maebashi, for alleged violations of the domestic Laws of Japan, in violation of the rights and privileges of the Plaintiffs, as citizens of the United States, as guaranteed to them by the Constitution and Laws of the United States, all as hereinafter more particularly charged and set forth.

JURISDICTIONAL FACTS AS TO DEFENDANTS, ETC.

4. The Defendant Charles E. Wilson is now the duly appointed and acting Secretary of Defense, and he derives his power and duties solely from and under the Acts of Congress thereunto enacted; and by virtue thereof the said Defendant is the principal Assistant to the President of the United States in all matters where the President acts under the Constitution as "Commander in Chief of the Army and Navy of the United States." By reason of the powers and duties thus granted to and imposed upon the said Defendant, he is the highest statutory Officer of the United States actually exercising authority and command over the persons and bodies of the Plaintiffs, and each of them, as members of the Armed Forces of the United States.²

The Defendant Wilber M. Brucker is now the duly appointed and acting Secretary of the Army, and is the actual head of the Department of the Army, and he likewise derives his powers and duties solely from and under the Acts of Congress there-

² In the official "*United States Government Organization Manual*" 1954-55 edition the powers and duties of the Secretary of Defense are in part stated as follows:

"The Secretary of Defense is the principal assistant to the President in all matters relating to the Department of Defense. Under the direction of the President, and subject to the provisions of the National Security Act of 1947, as amended, and Reorganization Plan 6 of 1953, the Secretary exercises direction, authority, and control over the Department of Defense. * * *

"Approved;

"C. E. WILSON."

unto enacted. By reason of the powers and duties thus granted to and imposed upon the said Defendant he is the second highest statutory Officer of the United States actually exercising authority and command over the persons and bodies of the Plaintiffs and each of them as members of the Armed Forces of the United States.³

And the Plaintiffs respectfully show and charge that none of the Constitutional exemptions of the President as head of the Executive Department, from review by the Judicial Department, are applicable to the two Defendants above named.

POWERS OF THE COURT OVER THE DEFENDANTS

5. By reason of the matters and things charged by the Plaintiffs in this Complaint, and by reason of the applicable provisions of Law, this Court has jurisdiction over the Defendant Charles E. Wilson, and the Defendant Wilber M. Brucker, and each of them, in the following respects, to wit:

a) To compel the Defendants and each of them to answer this Complaint, as provided by law.

b) To enter a decree herein, after due hearing of this cause, and to declare the Constitutional rights of these Plaintiffs and each of them, as more particularly prayed for in this Complaint.

³ In the official *"United States Government Organization Manual"* 1954-55 edition, the powers and duties of the Secretary of the Army are in part stated as follows:

"The Secretary of the Army is the head of the Department of the Army. Subject to the direction, authority, and control of the President as Commander in Chief and of the Secretary of Defense, the Secretary of the Army is responsible for and has the authority to conduct all affairs of the Army Establishment, including but not limited to those necessary or appropriate for the training, operations, administration, logistical support and maintenance, welfare, preparedness, and effectiveness of the Army, including research development, and such other activities as may be prescribed by the President or the Secretary of Defense as authorized by law.

"He is held responsible for the performance of the Army's mission in occupied areas, and for the protection of all installations and facilities within the United States, its Territories, and the District of Columbia, which are vital to the national security.

"Approved;

"C. E. WILSON."

c) To restrain and enjoin the Defendants and each of them (and through them to restrain and enjoin any and all of the subordinate officers of the Armed Forces of the United States in Japan) from compelling the Plaintiffs, or any of them, to attend and appear for trial in the Criminal Courts of Japan, as more particularly prayed for in this Complaint.

d) To order and direct the Defendants, and each of them (and through them, all of the subordinate officers of the Armed Forces in Japan), as more particularly prayed for in this Complaint.

PART II. THE NATURE OF THE CONTROVERSY HERE

EXISTENCE OF AN ACTUAL CONTROVERSY

6. The existence of an actual controversy here, which gives this Court power and jurisdiction in this case, under the Declaratory Judgment Act above mentioned, is shown by the general recitals of this Complaint, and particularly by its recitals hereinafter set forth.

THE ALTERCATION AT MAEBASHI, JAPAN

7. Sometime during the month of September 1955, the four Plaintiffs above named, while off duty from the Army and while visiting for personal reasons in the City of Maebashi, Japan, got into an altercation with certain Japanese civilians, out of which a minor type of riot developed, the four Plaintiffs as American soldiers on the one side defending themselves against a much larger group of Japanese civilians on the other side. The local Japanese Police thereupon entered into the altercation, and as a result the four Plaintiffs, as such American soldiers, came into physical conflict with the Japanese Police, as well as with numerous Japanese civilians. In that altercation the Plaintiffs, as American soldiers, were set upon and assaulted and beaten both by the Japanese civilians and by the Japanese Police; with the result that thereafter, and upon their return to their Army stations, each of the Plaintiffs was compelled to seek hospitalization for the wounds and lacerations.

tions inflicted upon them in that altercation. In defending themselves against the Japanese Police and the Japanese civilians these four American soldiers reluctantly but necessarily caused certain physical injuries to the Japanese civilians and the Japanese Police, and in addition there resulted certain physical damage to the store windows and premises immediately adjacent to the area of that altercation. Notwithstanding the various injuries inflicted by the participants on both sides of that altercation, no Japanese person, either among the Police or the civilians, suffered any permanent or gravely serious injury or physical wounds.

THE PLAINTIFFS NEVER ARRESTED BY THE JAPANESE POLICE

8. The important Jurisdictional fact to be stated here is that following the said altercation, none of the four Plaintiffs in this case were arrested or taken into custody by the Japanese Police or other authorities, either at the time of that altercation, or any time thereafter; but on the contrary each of the Plaintiffs returned voluntarily and unmolested by the Japanese authorities to their respective stations in the United States Army; and each of the Plaintiffs from the time of that altercation down to the filing of this Complaint has been at all times in the sole custody and control of the Army of the United States.

THE DEFENDANTS' INVOLUNTARY COMPULSION OF THE PLAINTIFFS

9. Notwithstanding the fact as above stated, that none of the Plaintiffs as American soldiers were ever arrested or detained or taken into custody by the Japanese Police or other Japanese authorities at any time, because of the altercation above described; and notwithstanding the total lack of power and authority so to do, as hereinafter more particularly set forth; nevertheless the Defendants above named, acting through their subordinate officers in the Armed Forces in Japan, then and there in command of the United States Army (for the purported reasons, and upon the illegal grounds herein-

after set forth) have at sundry times compelled each of the Plaintiffs, entirely involuntarily, to appear and submit to trial in a Japanese Criminal Court in the City of Maebashi under Japanese domestic Law; such compulsory attendance for trial having been forced on the Plaintiffs, and each of them, by their Commanding Officers in Japan, at various times during the months of October and November and December, 1955; and such compulsory attendance of the Plaintiffs will continue hereafter until the Plaintiffs and each of them have been convicted and sentenced to punishment by such alien Japanese Criminal Court, or have been discharged as not guilty, unless this Court intervenes on their behalf as hereafter prayed in this Complaint.

THE ENTIRE LACK OF DUE PROCESS AT SUCH JAPANESE TRIALS

10. The Plaintiffs show and charge that at each of the several sessions of the Criminal Court in Japan above mentioned, which have already been held, the trials of each of the Plaintiffs have been conducted under alien methods of procedure in which there has been an entire lack of Due Process of Law, in the American sense, as guaranteed to all American Citizens by the Constitution and Laws of the United States; and such lack of Due Process will continue in all future sessions of the Japanese Criminal Court, until each of these Plaintiffs has been convicted and sentenced under Japanese Law, or has been discharged after trial.⁴

And the Plaintiffs particularly show and charge that among the rights of Due Process of Law which have thus been denied

⁴ The 6th Amendment to the Constitution, which provides only part of the guaranties of Due Process of Law, in the American sense of that term, reads as follows:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

to each of them at such Japanese trials (and will be continued to be denied to them) are the following, to-wit:

a) Each of the Plaintiffs has been denied any semblance of a jury trial, either in the American sense of that term, or otherwise, in spite of the fact that such trial is not a Court Martial, but on the contrary is a trial under the ordinary Civil Laws of Japan.

b) Each of the Plaintiffs has been denied a fair and impartial trial in other respects, largely because their trials have been conducted solely in the Japanese language, and because no adequate or effective method of using interpreters in the American sense exists in the remote and provincial City of Maebashi, Japan.

c) Each of the Plaintiffs has been denied, in all substantial respects, the Constitutional guarantees of "confrontation" of witnesses, and of "obtaining witnesses in his favor," due to the adverse local facts and circumstances in the alien and provincial city where such trials are being held; and where the Plaintiffs are obviously regarded with suspicion, and where there exists a natural but strong reluctance of the natives to appear as witnesses on behalf of the Plaintiffs.

d) Each of the Plaintiffs has been denied the Constitutional guaranty of "the Assistance of Counsel for his defence", in substantial respects, due to following facts and circumstances:

1) Each of the Plaintiffs is totally without funds to employ Counsel for his defense.

2) There are no American Lawyers residing in or practicing in the City of Maebashi, and any Lawyer representing the Plaintiffs must travel about 60 miles to and from his office in the City of Tokyo, for each short and intermittent session of such trial.

3) The only Counsel so far representing these Plaintiffs in Japan have been two American Lawyers practicing in Tokyo, whose total fees and compensation (as these Plaintiffs are informed) is limited to the sum of \$1000, for all of the said trials, and for any

Appeal or Review thereof permitted by the Laws of Japan; such inadequate amount of fees having been arbitrarily fixed and made payable directly by the United States Army, under a so-called "*Directive*" issued for that purpose by the Defendant Wilber M. Brucker, as Secretary of the Army.⁵

4) The Defendant Wilber M. Brucker, as Secretary of the Army, although requested so to do, has refused under such "*Directive*", to make or grant any allowance for costs or expenses or fees for the representation of the Plaintiffs in the United States, either for the purpose of this suit or otherwise, although as already stated each of the Plaintiffs is entirely without funds for that purpose.

e) Under the intermittent and haphazard methods of Procedure actually prevailing at these Japanese trials of the Plaintiffs, no adequate or effective "Record" can be kept or made up, in the American sense of that term; with the result that upon conviction of the Plaintiffs, or any of them, in the Japanese Court, no adequate or effective means of opportunity of Appeal or Review will be possible or available to these Plaintiffs.

For the reasons set out in paragraphs a) to e), above alleged the result of such Japanese trials will be that the right of Due Process of Law will be denied to these Plaintiffs and each of them, in substantial respects, unless this Court shall intervene in their behalf, as prayed for in this Complaint.

THE JAPANESE COURT RECOGNIZES THE OBVIOUS LACK OF DUE PROCESS, ETC.

11. The Plaintiffs show and charge that at the latest session of their trials in the Japanese Court, on December 17, 1955,

⁵ The Counsel for the Plaintiffs in the United States are unfamiliar with the terms and conditions of such "*Directive*" (except as above set forth in paragraph 3); and except that they have been notified by the Counsel for the said Defendant Wilber M. Brucker, that no allowance whatever to the Plaintiffs will be made in the United States, either for costs and expenses or otherwise.

one of the American Lawyers for the Plaintiffs in Japan, Mr. Frank M. Scolinos, respectfully pointed out to the honorable Presiding Judge at such Japanese trials, the obvious lack of Due Process of Law in the American sense, which was being accorded these Plaintiffs under Japanese Law, in the Japanese Court, compared to the guaranties of Due Process of Law which would be accorded them, if tried in an American Court. And at the same time the said American Counsel for the Plaintiffs made a formal Motion before the honorable Presiding Judge at such Japanese trials, respectfully asking him to grant the Plaintiffs an extended continuance of their trials, for the particular purpose of permitting them to seek relief in the Courts of the United States, by way of contesting and challenging the power and authority, under any Law of the United States, by which the Defendants above named (and the officers of the Armed Forces in Japan acting under their direction and control) were and are attempting to compel the Plaintiffs, as American soldiers, to appear involuntarily, and to submit to the Jurisdiction of the Japanese Court in Maebashi, Japan, for trial under Japanese Law. The gist of such Motion was essentially the same as that charged in this Complaint: Namely that each of the purported "*Agreements*" hereinafter more particularly described, which it is claimed have been made and entered into between the Government of the United States on the one side, and the Government of Japan on the other side, attempts illegally to authorize and require the Army of the United States in Japan to compel the Plaintiffs, involuntarily, to submit to the Jurisdiction of the Japanese Court in the premises; that such purported "*Agreements*" were and are totally void and illegal, so far as they adversely affect these Plaintiffs, and each of them; and particularly so far as they purport to authorize the Defendants herein (and any and all Officers of the Armed Forces, acting under their direction and control) to compel the physical attendance of the Plaintiffs at such Japanese trials.

Thereupon the Presiding Japanese Judge at such Japanese trials most considerately took notice of the said Motion, and thereupon officially recognized the claim of the Plaintiffs about

the obvious lack of Due Process of Law, in the American sense, which was being accorded to these Plaintiffs, under Japanese Law. And thereupon the honorable Presiding Judge of the Japanese Court, with a high sense of the proper Comity which should exist between the United States and Japan, granted the aforesaid Motion for continuance, and continued the trial of each of the Plaintiffs in the Japanese Court to February 10, 1956, for the express purpose of permitting the Plaintiffs to contest the validity in the Courts of the United States of the aforesaid "Agreement"; and particularly to dispute and contest the power and authority of the Defendants herein (and any and all officers of the Armed Forces acting under their direction and control) to compel the Plaintiffs, as American soldiers in Japan, to submit to the Jurisdiction of the Japanese Court above mentioned, and compel them to submit themselves for trial under Japanese Law, in Japan.

And in compliance with such considerate continuance of their Japanese trials by the honorable Presiding Judge of the Japanese Court as above set forth, the Plaintiffs here and now respectfully bring this suit to submit the important controversy here involved to the Courts of the United States.

PART III. THE LACK OF POWER AND AUTHORITY OF THE DEFENDANTS IN THE PREMISES

THIS "STATUS OF FORCES AGREEMENT" ANALYZED

12. For the information of the Court a summarized critical analysis of the so-called "*Status of Forces Agreement*" with Japan (upon which each of the said Defendants purport to rely, at least in part, for their power and authority in the premises) is hereafter set forth as follows:

a) *As to Execution etc.* The said "Agreement" is set forth in a printed instrument, issued under the official seal of the Department of State, being printed in both the English and Japanese languages and running to 134 pages. This "Agreement" purports to have been

"signed at Tokyo, [Japan] February 19, 1954; entered into force June 11, 1954." ⁶

The said "*Agreement*" purports to have been entered into by the "United Nations Forces" in Japan on the one part and the Government of Japan on the other part and begins (page 1) with a preliminary recital that it is designed and intended: "To define the Status, and the treatment to be accorded to, such forces in Japan pending their withdrawal from its territory * * *."

The said "*Agreement*" (pp. 20 and 32) purports to have been negotiated by the Department of State on behalf of the United States, but it concludes with the recital that it was executed—

"For the Government of the United States of America Acting as the Unified Command" [in Japan].⁷

b) *As to Lack of Authority on Behalf of the United States.* At no place in the said "*Agreement*" is there any reference to, or any citation of, any power or authority authorizing the Department of State to enter into the said "*Agreement*" or to execute it; nor is there any claim or suggestion made in the said "*Agreement*" that any such power or authority had thereunto been given or delegated to the Secretary of State, either by the Congress or by the President as Chief Executive of the United States. Notwithstanding such complete lack of authority from either the Congress or the Chief Executive, the said "*Agreement*" (in Art. XVI and elsewhere) purports to authorize "the Military Authorities of the sending State" (namely the United States) to

⁶ The said "*Agreement*" bears the printed Certificate "Department of State Publication 5668, Literal Print;" and is published by the Department of State in the Compilation known as "*Treaties And Other International Acts*", Series 2995.

⁷ At the pages mentioned in the text it appears further that the said "*Agreement*" was also signed and executed on behalf of six other members of the United Nations (in addition to the United States) who have "*sent forces to Korea pursuant to the United Nations Resolutions*"; namely Canada, New Zealand, The United Kingdom of Great Britain, the Union of South Africa, the Commonwealth of Australia, and the Republic of the Philippines.

force and compel the physical attendance of these Plaintiffs at the Japanese Criminal Court in Maebashi, as already mentioned above, and to submit themselves to the jurisdiction of that Court for a criminal trial under the domestic Law of Japan, all in complete denial of the right of Due Process of Law accorded to these Plaintiffs by the Constitution of the United States as above set out.

c) *No Treaty Here Involved.* Notwithstanding the matters and things shown and charged in Paragraphs a) and b) above, the Secretary of State, without any power or authority therefor, has submitted to the Public Printer a copy of the said "Agreement" to be printed by the Public Printer as and for a formal Treaty on behalf of the United States—as more particularly set out hereafter in paragraph 13 of this Complaint.

d) *A Mere "United Nations Agreement" Here.* At page 21 of the said "Agreement" (for reasons which are nowhere else indicated or explained) there appears a statement, wherein it is recited:

"1. For the purposes of this Agreement the Government of the United States *acts only in the capacity of 'the Government of the United States acting as the Unified command.'*"⁸ [Emphasis added.]

It therefore appears on the face of the said "Agreement" that it was never executed by the United States, acting as a sovereign Nation solely on its own behalf; but on the contrary the said instrument was and is a mere "*United Nations Agreement*," for which the Government of the United States is "acting" merely as the spokesman for the "Unified Command," of the seven Nations which actually "sent forces to Korea pursuant to the United Nations Resolution."

Under the actual terms of this "Agreement", therefore the two Defendants herein have no lawful authority or power to

⁸ This restrictive statement is repeated, in substance, in Article I of the text of the "Agreement", page 2. It was therefore the clear intention of the "Agreement" not to bind the United States as an individual sovereign Nation, as stated above in the text.

compel these Plaintiffs involuntarily to submit themselves to the jurisdiction of the Criminal Courts of Japan; and thereby compel the Plaintiffs and each of them to lose their rights to Due Process of Law as guaranteed to them by the Constitution and Laws of the United States.

THE CONFUSING FALLACY ABOUT A "TREATY" HERE

13. The Plaintiffs show and charge that the Department of State has unfortunately confused the public mind with respect to the said "Agreement" with Japan, and has fostered a grave fallacy in the public mind that this "Agreement" somehow is to be considered as a "Treaty" between the two Nations; and has caused that confusion and has fostered that fallacy in two major respects to-wit:

First. At page 21 of the said printed "Agreement," the Department of State has, without any lawful authority whatever, caused the following recital to be incorporated therein:

"The Status of the United States Armed Forces in Japan is defined by arrangements made pursuant to the Security Treaty between the Government of Japan and the Government of the United States of America, signed at the City of San Francisco on September 8, 1951."

The fact is that the text and language of that Treaty between the two Nations in no way authorizes or justifies such a recital about the "Status" of the Armed Forces of the United States in Japan; and in no way "defines" or even mentions such "status." In that Treaty there appears the following recital:

"Article III

*"The conditions which shall govern the disposition of the Armed Forces of the United States in and about Japan shall be determined by Administrative Agreements between the two countries."**

* See the official publication of the United States "Security Treaty" with Japan, published by the Department of State in the Compilation cited in note 6, *ante*, Vol. 3, part 3, pages 3329 to 3352.

The language of the said Treaty above quoted is the only provision of the Treaty which is concerned with the "Armed Forces of the United States" in Japan; and that language is hinged upon and is limited to "the disposition" of such Armed Forces. To apply that language to the "*status*" of the individual members of the Armed Forces, and to stretch that language to the extent granting Jurisdiction over members of the Armed Forces to the Criminal Courts of Japan, is simply to pervert and corrupt the meaning of Article III of that Treaty. Moreover stretching the language of that Treaty in that fashion clearly denies Due Process of Law to these plaintiffs. Common sense forbids that the idea of "*the disposition of the Armed Forces*," as used in that Treaty should be corrupted into the idea of "*Status*", and in turn into the idea of local Criminal Jurisdiction granted to the Japanese Courts as the Department of State has attempted to do in the said "*Agreement*."

Second. The second grave fallacy which the Department of State has fostered and created in the public mind grows out of the illegal method by which that Department has caused this "*Agreement*" to be officially published in the Statutes of the United States, as and for a *Treaty, per se*. Thus the printed copy of this "*Agreement*" bears the official seal of the Department of State, and carries at its masthead the caption and assertion:

"Treaties And Other International Acts Series 2995."

In so doing the Department of State has illegally attempted to publish this "*Agreement*," (and also each of the "*Administrative Agreements*" mentioned and described in paragraph 14 of this Complaint) as if it were actually a Treaty, or actually a valid "International Act," under the statutes of Congress covering such matters, which are set out in the margin.¹⁰

¹⁰ In the provisions of the United States Code, with respect to the Department of State (5 U. S. C. A. Sec. 165) appears the following provision:

"SEC. 165. *Copies of treaties furnished to printer*

"The Secretary of State shall furnish to the Public Printer a correct copy

TWO FURTHER ILLEGAL "ADMINISTRATIVE AGREEMENTS" CONCERNING CRIMINAL JURISDICTION IN JAPAN

14. Plaintiffs show and charge that, in addition to the "*Status of Forces Agreement*" particularly mentioned and described in Paragraphs 12 and 13 of this Complaint, the Department of State (again without any lawful authority therefor from either the President or Congress) has attempted to enter into two further illegal "*Administrative Agreements*" with Japan, each of which is more particularly analyzed and described as follows, to-wit:

"Administrative Agreement" of February 28, 1952.

a) On February 28, 1952, the Department of State at Tokyo, Japan purported to sign on behalf of the United States another so-called "*Administrative Agreement*" with Japan in and by which it was provided in Article XVII as follows:

"Article XVII

"1) Upon the coming into force with respect to the United States of the '*Agreement between the Parties to the North Atlantic Treaty regarding the status of their Forces*,' signed at London on June 19, 1951, the United States will immediately conclude with Japan, at the option of Japan, an Agreement on Criminal Jurisdiction similar to the corresponding provisions of that Agreement.

"2) Pending the coming into force with respect to the United States of the North Atlantic Treaty Agreement referred to in paragraph 1, the United States Service Courts and Authorities shall have the right to exercise within Japan, exclusive jurisdiction over all offenses which may be committed in Japan by members of the United States Armed Forces * * *." (See the "*Department of State Bulletin*", Vol. 26, p. 382)

of every treaty between the United States and any foreign government as soon as possible after it has been duly ratified and has been proclaimed by the President; * * *."

See also the language concerning "*United States Treaties and Other International Acts*", enacted in 1950, and found in Title 1, U. S. C. A. Sec. 1129.

The Plaintiffs show and charge that notwithstanding the invalidity of the said "*Administrative Agreement*," the Defendants, and each of them (together with their various subordinate officers in the Armed Forces in Japan), have from time to time proceeded to compel certain members of the Armed Forces of the United States (other than these Plaintiffs) to submit themselves to the jurisdiction of the Criminal Courts of Japan, in a similar way to that in which these Plaintiffs are complaining of in this Complaint—the names of such other members of the Armed Forces, the details of such prior prosecutions, being presently unknown to these Plaintiffs.

"*Administrative Agreement*" of September 29, 1953.

b) On September 29, 1953 the Department of State at Tokyo, Japan, purported to sign still another "*Administrative Agreement*" which was described and characterized as an "*Amendment*" to the "*Administrative Agreement*" particularly mentioned in paragraph a) above. This last mentioned "*Administrative Agreement*" begins with certain preliminary recitals, which should be set out here and which read as follows:

"Whereas the 'Agreement between the Parties to the North Atlantic Treaty regarding the Status of Their Forces', signed at London on June 19, 1951, came into force on August 23, 1953 with respect to the United States of America; and

"Whereas Japan desires to conclude with the United States of America an agreement on criminal jurisdiction similar to the corresponding provisions of the said Agreement in accordance with the provisions of paragraph 1 of Article XVII of the Administrative Agreement, signed at Tokyo on February 28, 1952, under Article III of the Security Treaty between the United States of America and Japan;

"Now the Governments of the United States of America and Japan have agreed that the existing provisions of Article XVII of the said Administrative Agreement shall be abrogated and the following provisions

shall be substituted: * * *." (See the "*Department of State Bulletin*". Vol. 29, p. 595-96)

Following such preliminary recital the said "*Agreement*" of September 29, 1952, thereafter purports to set out certain extended provisions concerning the granting of Criminal Jurisdiction in Japan, at which place under the heading "*Article XVII*" there follows 11 separate and extended and detailed numbered paragraphs.

The Plaintiffs particularly charge, with respect to the said "*Article XVII*", and with respect to each of the said 11 numbered paragraphs that the language and recitals therein set out contain an identical recital to the similar series of paragraphs which are set out in "*Article XVI*" of the above described "*Status of Forces Agreement*" more particularly analyzed in Paragraph 12 of this Complaint—except that the "*Agreement*" mentioned and described in Paragraph 12 of this Complaint is concerned with "*The Government of the United States of America acting as the Unified Command*" in Japan; whereas the "*Agreement*" of September 29, 1953 (with which this numbered paragraph is particularly concerned) speaks of "*the Military Authorities of the United States*", alone.

THE SECURITY TREATY WITH JAPAN ANALYZED

15. It will be noted that in the preliminary recitals of the "*Administrative Agreement*" of September 29, 1953, above quoted, particular reference is made to "*Article III* of the Security Treaty between the United States of America and Japan"; and furthermore that the last mentioned "*Administrative Agreement*" of September 29, 1953, purports and attempts to rely upon and be authorized by, the said "*Article III*" of that Treaty. But the Plaintiffs show and charge that such purported and attempted reliance is entirely illegal and unauthorized when the language of that "*Article III*" (quoted above in paragraph 13 of this Complaint) is read and analyzed.

As already suggested above, "*Article III*" of the Security Treaty between the two countries is specifically limited to "*the disposition of the Armed Forces of the United States of America in and about Japan.*" Nevertheless the Department

of State has attempted to extend and expand the sense and meaning of the words last quoted, so that such language shall become applicable to the granting of Jurisdiction to the Criminal Courts of Japan over the members of the Armed Forces of the United States located in Japan, so far as violations of the domestic laws of Japan are concerned. As particularly pointed out in subparagraph "*first*" of Paragraph 13 of this Complaint, that extension of the language of the Security Treaty is entirely illegal and unauthorized. Totally aside from the logic and sense of the language of "Article III" of that Security Treaty, we find the word "disposition", as applied to Military Affairs, is defined by Webster's New International Dictionary as follows:

Military: assignment, distribution, or arrangement of troops, guns, etc.; as the disposition of the artillery was admirable.

For the reasons set out in paragraphs 14 and 15, above, as well as for the other reasons set out elsewhere in this Complaint, these Plaintiffs show and charge that the said "*Administrative Agreement*" of September 29, 1953, is totally void and illegal so far as it attempts to give the Defendants herein (together with their subordinate officers in the Armed Forces in Japan) any power or authority whatever to compel these Plaintiffs, involuntarily, to attend at the sessions of the Criminal Court of Japan at Maebashi, Japan, as above mentioned; or to compel the Plaintiffs, involuntarily, to submit themselves to the jurisdiction of the Japanese Courts for prosecution under the domestic laws of Japan, at the trial last mentioned.

DEFENDANTS NOT AIDED BY CONSTITUTIONAL WAR POWERS OF THE PRESIDENT

16. These Plaintiffs concede that in time of War the Constitutional War Powers of the President are very great, and that therefore the statutory powers of the above named Defendants as the two chief Assistants of the President in matters of National Defense, during War time, are matters over which the Judicial Department should not interfere—except in individual instances of wholly unjustifiable abuse of discretion.

But the Plaintiffs show and charge that no state of War now exists between the United States and Japan, or indeed with any other Nation in the world; on the contrary a Treaty of Peace and Security between the United States and Japan has existed since September 1951.¹¹ Accordingly the two Defendants above named (as well as their subordinate Officer in the Armed Forces in Japan) are in no way aided or justified by the Constitutional War Powers of the President; but on the contrary the statutory powers and authority of each of the said defendants, so far as such powers and authority purport to arise out of the "*Agreements*" mentioned and described in paragraphs 12 to 14 of this Complaint are concerned must be judged and appraised by this honorable Court on the basis and footing that a condition of Peace now exists between the United States and Japan.

THESE SO-CALLED "AGREEMENTS" ARE MERE ADMINISTRATIVE
REGULATIONS, ONLY

17. The Plaintiffs show and charge that each and all of the "*Agreements*" mentioned and described in paragraphs 12, 13, and 14 of this Complaint, in so far they purport to authorize the Defendants and each of them (and their subordinate officers in the Armed Forces in Japan) to act adversely to these Plaintiffs in the premises, constitute mere Administrative acts and decisions only, so far as the Department of Defense is concerned; and accordingly all such acts and decisions of the Defendants, adversely to these Plaintiffs, as charged in this Complaint, have no Legislative or Executive power or sanction whatever. The legal result of the said "*Agreements*" therefore is, so far as these Plaintiffs are concerned, that all the actions and steps of the two Defendants in the premises, which they have already taken, or will take in the future, adversely to these Plaintiffs, are mere administrative proceedings which come within the purview of the Administrative Procedure Act of 1946 already mentioned in this Complaint. Accordingly all

¹¹ For the terms and conditions of that Treaty of Peace and Security between the two countries, see the official Compilation cited in Note 6, ante (1952) Vol. 3, part 3, page 3329 to 3332.

such steps or actions of the Defendants in the premises come within the provisions of that Act concerned with the topic "*Judicial Review of Agency Action*", as hereinafter set out in the margin for the convenience of the Court.¹²

By and under that Act of Congress the Plaintiffs, and each of them, have an additional and alternative statutory right to challenge and contest the Constitutionality and the legal validity of the Orders and Commands of the Defendants, and each of them (together with the other Officers of the Armed Forces in Japan acting under their control) under which the Plaintiffs have been compelled involuntarily to appear before the Japanese Court in the City of Maebashi, Japan, as above set out; and by and under that Act, the Defendants and each of them, as Administrative Officers of the United States, are compelled to submit their acts and doings in the premises to the review of this court.

THE CONSTITUTION SHOULD FOLLOW THE FLAG, WITH RESPECT
TO AMERICAN SOLDIERS

18. The Plaintiffs respectfully show and charge that each of them has been drafted into the Armed Forces of their Government, and has been ordered and sent, involuntarily, to the alien Country of Japan for extended service in the Army of the United States; and for that reason the Plaintiffs are in a different category, so far as their rights to Due Process of Law are

¹² The applicable provisions of the Administrative Procedure Act here involved (Title 5 U. S. C. A. Sec. 1009) read as follows:

"Judicial review of agency action"

"(a) *Rights of review.* Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

"(b) *Form and venue of proceedings.* The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. * * *

"(c) *Acts reviewable.* Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. * * *

concerned, while serving in that alien Country, from other American citizens who have gone voluntarily to Japan, and have thereby consented to submit themselves to the domestic laws of Japan, while in that Country. For that reason Plaintiffs respectfully assert and claim immunity from trial in the Japanese Criminal Courts, while serving in the Army of the United States; particularly where the Plaintiffs have never been arrested or taken into custody by the Japanese authorities (a fact already alleged above), and where the Japanese Court has only been able to get and have physical jurisdiction over the persons and bodies of the Plaintiffs by reason of the fact that the United States Army in Japan has forcibly compelled the Plaintiffs to appear in the said Japanese Court, and then and there submit themselves, involuntarily, to be tried under Japanese domestic law. And the Plaintiffs further assert and claim that under the Constitution and Laws of the United States, they are entitled to the shelter and protection of their Government, in the matter of their Constitutional rights, while serving abroad as its soldiers, in a foreign land, rather than to have their Government penalize them, by depriving them of their right to Due Process of Law, as charged above in this Complaint. In a word, the Plaintiffs assert and claim that, under the facts of the case at bar, the Constitution should follow the flag with respect to all members of the Armed Forces who are being compelled to serve their Country in a far-off and alien land—unless and until a formal Treaty providing otherwise has been negotiated by the President and its ratification advised by the Senate.

THE CONSTITUTION EXCLUDES "ADMINISTRATIVE AGREEMENTS"
FROM "THE SUPREME LAW OF THE LAND"

19. The Constitution of the United States, in Article VI, Clause 2, provides, in part:

This Constitution and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made under the Authority of the United States, shall be the Supreme Law of the Land, * * *

It is further provided in Article 2, Section 2, Clause 2, with respect to the President:

He shall have the power, by and with the advice and consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur * * *.

The Plaintiffs therefore show and charge that since the various "*Administrative Agreements*" mentioned and referred to in this Complaint have not been made as Treaties, they do not become a part of the "Law of the Land" of the United States, and therefore cannot be permitted to adversely affect the Constitutional rights of these Plaintiffs to Due Process of Law, in the American sense of that term.

SUMMARY OF MAIN ISSUES HERE

20. It will be helpful to the Court, we believe, if a short summary of the main issues intended to be raised by this Complaint are stated, which is accordingly done as follows:

a) In the case of the so-called "Nato" Nations in Europe, the United States actually made and entered into a Treaty with those Nations, and each of them, respecting the matter of Criminal Jurisdiction by those Nations, over members of the Armed Forces of the United States for alleged violations of the domestic laws of those countries. By that Treaty the matter of the "Status of the Armed Forces" of the United States stationed in those Nations, so far as Criminal Prosecution under the domestic Laws of those Nations is concerned, was particularly spelled out and expressly granted to those Nations by that Treaty.

The Plaintiffs, therefore, show and charge that thereby the Government of the United States has set a precedent in respect of such Criminal Jurisdiction over the Armed Forces of the United States, which precedent must be also followed in the case of Japan; and accordingly a Treaty with Japan must be made and entered into, granting Criminal Jurisdiction to Japan, over the

members of the Armed Forces of the United States, concerning all violations by them of the domestic Law of Japan, before the Defendants can have any power or authority whatever in the premises.

b) In complete violation of that precedent the Department of State has attempted on its own authority alone, by the "*Administrative Agreements*" above mentioned, to grant to Japan such Criminal Jurisdiction over all members of the Armed Forces of the United States for all violations by them of the domestic laws of Japan; even though such members of the Armed Forces have never been arrested or taken into custody by the police or other authorities of Japan. Such a sweeping grant of power to the Defendants, permitting them to compel attendance of these Plaintiffs at such trials before the Japanese Criminal Courts, can only be authorized by Treaty.

c) These Plaintiffs show and charge that the Security Treaty between the United States and Japan gives no power or authority to the Department of State to negotiate any "*Administrative Agreement*" with Japan, concerning the subject matter of Criminal Jurisdiction. That Security Treaty provides in "*Article III*" (above set out) that "*Administrative Agreements*" between the two Nations shall be limited strictly to "*the disposition*" of the Armed Forces of the United States, in Japan. The last quoted language of that Security Treaty cannot lawfully be extended to cover the granting of Criminal Jurisdiction to the Japanese Courts, as the Department of State has attempted to do, under the "*Administrative Agreements*" above mentioned and described. Accordingly the foregoing "*Administrative Agreements*" (while they may be good so far as the "*disposition*" of the Armed Forces in Japan for other purposes is concerned) cannot be relied upon by these Defendants to authorize them (or their subordinate officers in Japan, acting under their direction and control) to compel the attendance of these Defend-

ants at the trials of the Criminal Court of Japan at Maebashi, Japan, as hereinabove set forth.

PRAYER FOR DECLARATORY JUDGMENT

Wherefore, and by reason of the matters and things above shown and alleged in this Complaint, the Plaintiffs above named pray (on behalf of themselves and of all other members of the Armed Forces in Japan similarly situated) that this honorable Court take and assume jurisdiction of this action and of the subject matter thereof, and of the parties hereto; and that after due hearing of this cause, the Court may declare the rights and other legal relations of the Plaintiffs in the premises.

And the Plaintiff's particularly pray that after such hearing this Court enter a Declaratory Judgment herein finding and declaring:

A) That each of the so-called "*Agreements*", made by the Department of State with Japan (as particularly mentioned and described in this Complaint), be declared to be and held to be entirely void and illegal so far as these Plaintiffs are concerned; and to be in violation of the Constitution and Laws of the United States, insofar as the said "*Agreements*" purport to authorize or require the above named Defendants, or either of them (and the Officers of the Armed Forces of the United States acting under their direction and control in Japan) to command and order and compel the Plaintiffs, involuntarily, to appear before and attend at the future sessions of the Japanese Criminal Court at Maebashi, Japan, and to submit to the jurisdiction of the said Court for trial under the domestic laws of Japan.

B) That the plaintiffs, as soldiers in the Armed Forces in Japan, are not to be subjected in any way to the provisions of any of the so-called "*Agreements*" above mentioned, with respect to Criminal Jurisdiction on the part of Japan; but on the contrary that the Plaintiffs (and all other members of the Armed

Forces in Japan similarly situated) are to be forthwith absolved and released from any compulsive orders from their commanding officers in Japan based on the said "*Agreements*" requiring or compelling the Plaintiffs to appear before and submit to trial before the Japanese Criminal Court at Maebashi, under the domestic laws of Japan.

PRAYER FOR INJUNCTIVE RELIEF

And the Plaintiffs further pray (on behalf of themselves and all other members of the Armed Forces in Japan) that after a hearing of this action and entry of a Declaratory Judgment herein as above prayed this Court shall grant further Injunctive Relief to the Plaintiffs in accordance with Section 2202 of the Declaratory Judgment Act of the United States and particularly that this Court shall—

Enter an appropriate Order or Decree herein restraining and enjoining the Defendants, and each of them (and all other officers of the Armed Forces of the United States in Japan acting under the direction and control of the said Defendants) from taking any steps or performing any acts designed or intended to carry out or enforce, as against these Plaintiffs, any of the provisions of the so-called "*Agreements*" with Japan hereinabove more particularly described; and further restraining the Defendants, and each of them, from taking any steps or performing any acts looking toward the compulsion of the Plaintiffs to attend and appear before the Criminal Court of Japan at Maebashi, Japan, and submit themselves to the jurisdiction of that Court for trial under the domestic laws of Japan.

And also enter an Order or Decree, by way of a mandatory injunction, directing and commanding the Defendants and each of them, to issue forthwith appropriate orders and commands to all of their subordinate officers in the Armed forces in Japan, directing them in turn to refrain and desist, in the future, from compelling

these Plaintiffs, or any of them, to appear before the Criminal Courts of Japan for trial, under the domestic Laws of Japan.

And the Plaintiffs further pray that this Court may grant to them such other and further relief in the premises under the Declaratory Judgment Act of the United States, as may be lawful and meet and just.

PRAYER FOR TEMPORARY STAY ORDER

These Plaintiffs respectfully show to the Court (as more particularly set out in paragraph 11 of this Complaint) that the Japanese Criminal Court as Maebashi, Japan, on December 17, 1955 considerably granted to these Plaintiffs a continuance of their trials in such Japanese Court down to and including February 10, 1956; that the said Japanese Court granted such continuance of the hearings in Japan for the particular purpose of permitting these Plaintiffs to bring this present action in the Courts of the United States, and thereby to have their Constitutional rights in the premises considered and adjudged by the Courts of their own country. The Plaintiffs show that beginning with the date of December 17, 1955, last mentioned the Attorneys for these Plaintiffs in America have continuously and diligently been at work planning and drafting and having printed the present Complaint; that the legal work thereby required and imposed on Counsel has been important and exacting and protracted; to such an extent that the said Attorneys have been unable to complete the drafting and printing of this Complaint until the 10th day of January 1956; and that this Complaint has thereafter been promptly filed in this Court.

The Plaintiffs further show that these Defendants under the provisions of law applicable thereto have sixty days following the filing of this Complaint, and down to on or about the 5th day of March 1956 within which to answer or otherwise Plead to this Complaint. The Plaintiffs accordingly respectfully show that the continuance, which has been considerably granted to these Plaintiffs by the Criminal Court in Japan, will

have expired more than three weeks before the time the Defendants are required to Answer or Plead to this Complaint; and that unless a Temporary Stay Order, as hereinafter prayed for, be granted by this Court, the Jurisdiction of this honorable Court in the premises, to hear and consider this Complaint and the Answer or other Pleadings of the Defendants will be jeopardized and impaired; by reason of the fact that a Judgment of Conviction against these Plaintiffs, and sentence thereon, will most probably have been made and entered by the Japanese Criminal Court in Japan, before the honorable Court can hear and determine the matters and things set forth in this Complaint.

Wherefore, the Plaintiffs respectfully pray that this Court, on due Notice to the Defendants, and each of them, and their Attorneys, may enter a Temporary Stay Order against the Defendants, and each of them (and through them all their subordinate officers in the Armed Forces in Japan) restraining them, and each of them, forthwith, from taking any action or steps by way of further compulsion against these Plaintiffs, whereby the Plaintiffs shall, involuntarily, be compelled to appear before such Criminal Court in Japan; and that such Temporary Stay Order be kept in force, until the further order of this Court. And the Plaintiffs ask that this Court may grant the Plaintiffs such further and particular relief with respect to such Temporary Stay Order as justice may require.

FURTHER RELIEF UNDER THE ADMINISTRATIVE PROCEDURE ACT

In the alternative the Plaintiffs further pray that they may be granted the right of Judicial Review of the action of the Defendants, and each of them, in respect of the matters and things charged against the Defendants in this Complaint, as such right of Review is provided in the Administrative Procedure Act of the United States, as more particularly mentioned and described in paragraph 17 of this Complaint.

PRAYER FOR PROCESS

The Plaintiffs further pray that the Process of this Court be issued against the Defendant, Honorable Charles E. Wilson,

or Secretary of Defense, and the Defendant Honorable Wilber M. Brucker, Secretary of the Army, as provided by law.

All of which is respectfully submitted to this honorable Court.

ALAN C. MAY,
Private, U. S. A.,
 WALTER R. MCKENZIE,
Corporal, U. S. A.,
 KENNETH J. REYNOLDS,
Private, U. S. A.,
 JESSE NORDYKE,
Private, U. S. A.,
Plaintiffs herein.

URBAN A. LAVERY,
of Chicago, Illinois, and
 WILLIAM P. MACCRACKEN, Jr.,
of Washington, D. C.,
Attorneys for Plaintiffs.

BEN BRUCE BLAKENEY,
Tokyo, Japan,
 FRANK H. SCOLINOS,
Tokyo, Japan,
 MURRAY SPRUNG,
Tokyo, Japan,
Attorneys for these Plaintiffs in Japan.

STATE OF ILLINOIS,
County of Cook, ss:

Urban A. Lavery being first duly sworn deposes and says that he is one of the Attorneys in the above entitled action and is duly authorized to make this affidavit on their behalf; and affiant states that he has read the above and foregoing Complaint, and is personally familiar with the matters and things therein set out and that all matters of fact therein charged are true and correct.

URBAN A. LAVERY.

Subscribed and sworn to before me a Notary Public in and for the State and County aforesaid this 10th day of January 1956.

[SEAL]

LEO V. CLEARY,
Notary Public.

In support of the above Motion there is submitted herewith the Affidavit of Urban A. Lavery, one of the undersigned attorneys for the Plaintiffs.

Respectfully submitted.

URBAN A. LAVERY,
WILLIAM P. MACCRACKEN,
Attorneys for the above-named Plaintiffs.

Dated at Washington, D. C., January 14, 1956.

Motion for preliminary injunction or temporary stay order
(Filed January 14, 1956)

Come now the above named Plaintiffs by Urban A. Lavery and William P. MacCracken, their attorneys, and respectfully ask the Court to grant the Plaintiffs a Preliminary Injunction or a Temporary Stay Order, against each of the Defendants (and through them against all their subordinate officers in the Armed Forces in Japan) ordering them and all of them to retain the custody of the Plaintiffs and each of them, as soldiers in the Armed Forces of the United States who are now stationed in Japan, pending the outcome of the hearing of this cause in this court; and particularly enjoining the Defendants and each of them (together with their subordinate officers in Japan above mentioned) from compelling the Plaintiffs or any of them to appear and attend physically at the trials of the Criminal Court of Japan, at Maebashi, Japan, on February 10, 1956, or on any date thereafter, until the further Order of this Court.

Affidavit in support of the foregoing motion

(Filed January 14, 1956)

STATE OF ILLINOIS,

County of Cook, ss:

Urban A. Lavery, being first duly sworn, deposes and says that he is one of the attorneys for the Plaintiffs in the above entitled cause and is duly authorized to make this Affidavit on their behalf in support of the foregoing Motion for a Temporary Stay Order and in that behalf Affiant states:

1. He is personally familiar with the matters and things set out in the Complaint of the above named Plaintiffs heretofore filed in this Court, and is the person who has signed the verifying Affidavit to the original copy of such Complaint filed in this Court.

2. That on December 17, 1955, the Presiding Judge of the Criminal Court of Japan sitting at Maebashi, Japan, on the Motion of the American attorney for the Plaintiffs, in Japan, Mr. Frank M. Scolinos, awarded to and granted to the Plaintiffs and each of them a continuance of their trials in the above mentioned Japanese Court from the date last mentioned down to February 10, 1956; that such continuance was awarded these Plaintiffs out of a sense of International Comity by the said Japanese Criminal Court for the particular and express purpose of permitting these Plaintiffs and each of them to seek relief in the Courts of the United States, and there have the important question heard and decided by such courts as to whether the Armed Forces of the United States had any lawful authority under the Constitution and Laws of the United States, to compel these Plaintiffs involuntarily to appear physically at such Japanese Criminal trials, and there submit themselves to prosecution involuntarily under the domestic laws of Japan, for certain charges brought against the Plaintiffs by the Japanese criminal authorities.

3. Affiant states that under the applicable laws concerning procedure in this honorable Court the Defendants and each of them have a period of sixty days from the filing of the Com-

plaint herein within which to Answer or otherwise Plead thereto; and that because of such sixty day period for pleading awarded to the Defendants, the continuance-date awarded to the Defendants by the Criminal Court of Japan, as above mentioned, will have come and gone before this case can be heard and considered by this honorable Court, unless the Temporary Stay Order particularly prayed for in the said Complaint, and particularly asked of this Court in the foregoing Motion, shall be granted by this Court.

4. Affiant further states that unless this Court grants and awards to these Plaintiffs the Temporary Stay Order above mentioned there is serious danger and risk that this Court will lose jurisdiction of this cause by reason of the fact that these Plaintiffs or some of them may be convicted and sentenced by the Japanese court in Japan above mentioned, before this cause can be heard on the merits by this honorable Court.

5. In support of the showing about irreparable injury to these Plaintiffs and about the serious danger and risk that this Court may lose jurisdiction of this cause, unless a Preliminary Injunction or Temporary Stay Order is entered herein, the Affiant states as follows:

On to wit the 12th day of January 1956 an Associated Press dispatch from the city of Tokyo, Japan was received in Chicago by the Chicago Sun-Times concurrently with the day and hour that the above entitled suit was filed in this Court, reading as follows:

Tokyo, Jan. 12 (AP)—A Japanese Prosecutor said today the trial of a Chicago soldier for assault would continue despite plans to file a suit in the United States testing the right of foreign courts to try U. S. servicemen.

Taro Hirai, in charge of the case, said the U. S.—Japan Agreement, which gives Japan the right to try servicemen for off-duty crimes, is valid.

The United States has similar Treaties with other Nations.

Pfc. Allan C. May, 21, Chicago, and three other soldiers are on trial for assault and battery and inciting a riot Sept. 4 in a Pinball Parlor in Maebashi, near Tokyo.

The next trial session is set for Feb. 10.

In view of the statement of the Japanese Prosecutor in the criminal trials in Japan, to wit Taro Hirai (named in the said dispatch) that the trials of these Plaintiffs in the Criminal Court in Japan—

Would continue despite plans to file a suit in the United States testing the right of foreign courts to try U. S. servicemen.

It is apparent that the Japanese trials of these Plaintiffs will most likely be concluded and terminated with probable conviction and sentencing of some of these Plaintiffs or all of them before their rights can be heard on the merits under the Complaint of the Plaintiffs filed in this Court.

Further Affiant saith not.

URBAN A. LAVERY.

Subscribed and sworn to before me a Notary Public in and for the County and State above named this 12th day of January 1956.

[SEAL]

LEO V. CLEARY,
Notary Public.

Affidavit of Howard S. Levie

(Filed January 26, 1956)

COMMONWEALTH OF VIRGINIA,

County of Arlington, ss:

Howard S. Levie, being duly sworn, deposes and says as follows:

I am a Colonel in the Judge Advocate General's Corps, Department of the Army, and I am the Chief of the International Affairs Division, Office of the Judge Advocate General, Department of the Army. It is one of the functions of my Division to collect, collate, and maintain files on the arrangements with regard to the exercise of criminal jurisdiction entered into between the United States and foreign countries. It is also one of the functions of my Division, as Executive Agent for the Department of Defense, to collect, collate, maintain, analyze,

and evaluate data and statistics received from all overseas commands of the Army, Navy, and Air Force with regard to the exercise of criminal jurisdiction by foreign courts over members of the United States Armed Services, members of the civilian component of those Services, and the dependents of both of the foregoing categories of persons.

The Treaty of Peace with Japan was signed at San Francisco on 8 September 1951 by the plenipotentiaries of the United States of America and forty-seven other allied nations and Japan. Ratification was advised by the United States Senate on 20 March 1952; the President of the United States ratified the Treaty on 15 April 1952; and it entered into force on 28 April 1952 (T. I. A. S. 2490).

Article 6 (a) of the Peace Treaty provides:

(a) All Occupation Forces of the Allied Powers shall be withdrawn from Japan as soon as possible after the coming into force of the present Treaty, and in any case not later than 90 days thereafter. Nothing in this provision shall however prevent the stationing or retention of foreign armed forces in Japanese territory under or in consequence of any bilateral or multilateral agreements which have been or may be made between one or more of the Allied Powers, on the one hand, and Japan on the other.

The Security Treaty Between the United States of America and Japan was also signed at San Francisco on 8 September 1951 by the plenipotentiaries of the United States of America and Japan. Ratification was advised by the United States Senate on 20 March 1952; the President of the United States ratified the Treaty on 15 April 1952; and it entered into force on 28 April 1952 (T. I. A. S. 2491).

Article I of the Security Treaty provides, *inter alia*:

Japan grants, and the United States of America accepts the right, upon the coming into force of the Treaty of Peace and of this Treaty, to dispose United States land, air and sea forces in and about Japan.

Article III of the Security Treaty provides:

The conditions which shall govern the disposition of armed forces of the United States of America in and about Japan shall be determined by administrative agreements between the two Governments.

The Administrative Agreement under Article III of the Security Treaty Between the United States of America and Japan (of which a copy is attached hereto and made a part hereof as Annex A) was signed at Tokyo on 28 February 1952 by the representatives of the United States of America and Japan and entered into force on 28 April 1952 (T. I. A. S. 2492).

Article XVII of the aforesaid Administrative Agreement provides, *inter alia*:

1. Upon the coming into force with respect to the United States of the "Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces", signed at London on June 19, 1951, the United States will immediately conclude with Japan, at the option of Japan, an agreement on criminal jurisdiction similar to the corresponding provisions of that agreement.

The Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of their Forces was signed at London on 19 June 1951. Ratification was advised by the United States Senate on 14 July 1953; the President of the United States ratified the Agreement on 23 July 1953; and it entered into force on 23 August 1953.

The advice and consent of the Senate to the ratification of the North Atlantic Treaty Organization Status of Forces Agreement (T. I. A. S. 2846) was given with an express reservation, of which a copy is attached hereto and made a part hereof as Annex B. The Senate reservation stipulated, *inter alia*, that in any case in which it should appear that an accused member of the United States forces in a foreign court would not be protected, because of the absence or denial of constitutional rights, a waiver of foreign jurisdiction should be requested and, if refused, waiver of jurisdiction should be made the subject

of diplomatic request, and further that a representative of the United States should attend the trial of any such accused and report to appropriate United States authority any failure by foreign authorities to protect the rights of the accused in accordance with the terms of the agreement.

The Protocol to Amend Article XVII of the Administrative Agreement under Article III of the Security Treaty Between the United States of America and Japan (of which a copy is attached hereto and made a part hereof as Annex C) was signed at Tokyo on 29 September 1953 by the representatives of the United States of America and Japan and entered into force on 29 October 1953 (T. I. A. S. 2848).

The said Protocol provides, *inter alia*:

5. (a) The military authorities of the United States and the authorities of Japan shall assist each other in the arrest of members of the United States armed forces, the civilian component, or their dependents in the territory of Japan and in handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions.

* * * * *

9. Whenever a member of the United States armed forces, the civilian component or a dependent is prosecuted under the jurisdiction of Japan he shall be entitled:

- (a) to a prompt and speedy trial;
- (b) to be informed, in advance of trial, of the specific charge or charges made against him;
- (c) to be confronted with the witnesses against him;
- (d) to have compulsory process for obtaining witnesses in his favor, if they are within the jurisdiction of Japan;
- (e) to have legal representation of his own choice for his defense or to have free or assisted legal representation under the conditions prevailing for the time being in Japan;
- (f) if he considers it necessary, to have the services of a competent interpreter; and

(g) to communicate with a representative of the Government of the United States and to have such a representative present at his trial.

10. (a) Regularly constituted military units or formations of the United States armed forces shall have the right to police any facilities or areas which they use under Article II of this Agreement. The military police of such forces may take all appropriate measures to ensure maintenance of order and security within such facilities and areas.

(b) Outside these facilities and areas, such military police shall be employed only subject to arrangements with the authorities of Japan and in liaison with those authorities, and insofar as such employment is necessary to maintain discipline and order among the members of the United States armed forces.

Agreed Official Minutes Regarding the Protocol to Amend Article XVII of the Administrative Agreement (of which a copy is attached hereto and made a part hereof as Annex D) were also signed at Tokyo on 29 September 1953 (T. I. A. S. 2848) by the representatives of the United States of America and Japan, and provide, *inter alia*:

Re paragraph 9:

1. The rights enumerated in items (a) through (e) of this paragraph are guaranteed to all persons on trial in Japanese courts by the provisions of the Japanese Constitution. In addition to these rights, a member of the United States armed forces, the civilian component or a dependent who is prosecuted under the jurisdiction of Japan shall have such other rights as are guaranteed under the laws of Japan to all persons on trial in Japanese courts. Such additional rights include the following which are guaranteed under the Japanese Constitution:

(a) He shall not be arrested or detained without being at once informed of the charge against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately

shown in open court in his presence and the presence of counsel;

(b) He shall enjoy the right to a public trial by an impartial tribunal;

(c) He shall not be compelled to testify against himself;

(d) He shall be permitted full opportunity to examine all witnesses;

(e) No cruel punishments shall be imposed upon him.

2. The United States authorities shall have the right upon request to have access at any time to members of the United States armed forces, the civilian component, or their dependents who are confined or detained under Japanese authority.

3. Nothing in the provisions of paragraph 9 (g) concerning the presence of a representative of the United States Government at the trial of a member of the United States armed forces, the civilian component or a dependent prosecuted under the jurisdiction of Japan, shall be so construed as to prejudice the provisions of the Japanese Constitution with respect to public trials.

Re paragraphs 10 (a) and 10 (b):

1. The United States military authorities will normally make all arrests within facilities and areas in use by and guarded under the authority of the United States armed forces. This shall not preclude the Japanese authorities from making arrests within facilities and areas in cases where the competent authorities of the United States armed forces have given consent, or in cases of pursuit of a flagrant offender who has committed a serious crime.

The United States—Japan Joint Committee, established pursuant to Article XXVI of the Administrative Agreement between United States and Japan, has approved, on various dates in 1953 and 1954, and thereby made effective and applicable to the exercise of criminal jurisdiction by Japanese authorities over members of the United States armed forces in Japan, matters of procedure, definitions, and interpretations

with respect to the Protocol and Official Minutes of 29 September 1953, amending Article XVII of the Administrative Agreement. Said matters of procedure, definitions, and interpretations (sometimes called the "Agreed Views") have been printed and published by Headquarters, United States Army Forces, Far East, as "AFFE Pamphlet No. 27-1", of which a copy is attached hereto and made a part hereof, as Annex E.

The aforesaid "Agreed Views" provide, *inter alia*:

No. 9: (a) When members of the United States Armed Forces, the civilian component or their dependents are arrested by the Japanese authorities, the arresting officers will immediately notify the nearest Provost Marshal of the United States Armed Forces that such arrest has been made and will turn the prisoner over to him when the primary right to exercise jurisdiction rests with the United States or when it is questionable whether the alleged offense arose out of the performance of official duty. Immediate notification will be made by the United States authorities of the determination as to the official duty status of the offender. When the primary right to exercise jurisdiction shall be made by the Japanese authorities as to whether there is adequate cause and necessity to retain such offender, and if not, such person will be released to the custody of the United States authorities, subject to the provisions of paragraph 11 (a), following. Thereafter the United States authorities shall, upon request, transfer the custody of such person to the Japanese authorities at the time he is indicted by the latter.

(b) Notification under paragraph 2 of the Official Minutes relating to paragraph 5 of the Protocol shall be immediately made to the nearest Japanese Police officer by the local Provost Marshal who made the arrest. The persons referred to in paragraph 2 of the Official Minutes relating to paragraph 5 of the Protocol, when arrested by the United States authorities, will be made available upon request to the Japanese authorities

for joint United States-Japanese investigations as provided for in paragraph 24, following.

* * * * *

No. 45:

(b) In all trials in Japanese courts of members of the United States Armed Forces, the civilian component, or their dependents, the Chief Procurator of the District in which such trial is to be held will notify in writing the Legal Office of the Headquarters in Japan of the branch of the United States Armed Forces of which the accused is a member, within a reasonable time before trial, of the date, place and time the trial is to be held. The Chief Procurator concerned will be notified in writing by such Legal Office prior to the date of trial, of the name or names of the United States representatives designated to attend such trials. No more than two such representatives will attend any one such trial.

The present Constitution of Japan was promulgated November 3, 1946, and provides, *inter alia*:

ARTICLE 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

* * * * *

ARTICLE 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

ARTICLE 32. No person shall be denied the right of access to the courts.

ARTICLE 33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.

ARTICLE 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor

shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

ARTICLE 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.

Each search and seizure shall be made upon separate warrant issued by a competent judicial officer.

ARTICLE 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

ARTICLE 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

ARTICLE 38. No person shall be compelled to testify against himself. Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

ARTICLE 39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

Although the Senate Resolution before mentioned applies only in countries where the North Atlantic Treaty Organization Status of Forces Agreement is currently in effect, the Depart-

ment of Defense has made applicable in Japan the same procedures for safeguarding the interests of United States personnel subject to Japanese jurisdiction.

Representatives of the United States are designated by the United States Ambassador to Japan to attend and observe each trial of United States military personnel in the Japanese courts and to report in each case upon the observance of all of the safeguards stipulated for the protection of the accused by the Administrative Agreement, as amended, by the Official Minutes and "Agreed Views", and by Japanese law. (Examples of official observers' reports are attached hereto as Annexes F, G, and H.) Designated observers are legally trained commissioned officers of the United States armed forces and are invariably accompanied by a competent interpreter to insure intelligent observation of the Japanese proceedings.

The official language of the Japanese courts is, of course, the Japanese language; hence all oral testimony, argument, and proceedings must be conducted, and all documentary material must be presented, in the Japanese language. The Japanese courts have furnished interpreters for all cases involving United States personnel since the effective date of the Amendment to Article XVII of the Administrative Agreement. In addition, in order to assist the accused and in preparing his defense or in conferring with Japanese counsel, and, if desired by the accused, to accompany him in the courtroom, it is customary for the accused's armed force to furnish him with a competent interpreter.

The data furnished by the three United States armed services in Japan to their respective Departments, regarding the exercise of jurisdiction by Japan over the personnel of those services, as compiled by my Division aforesaid as Executive Agent for the Department of Defense, disclose that, since the effective date of the Amendment to Article XVII of the Administrative Agreement, 29 October 1953, through 30 November 1955, there have occurred in Japan a total of seven thousand and thirty-seven (7037) incidents (including two thousand seven hundred and eighty-eight (2788) alleged traffic violations, involving United States service personnel, upon which might have been based charges of offenses within the primary jurisdiction of

Japan. Of the foregoing total, forty-two (42) were pending as of 30 November 1955; two hundred and eighty-five (285) cases have been tried by the Japanese courts; in all other cases either charges have been dropped or Japanese jurisdiction has been waived. The two hundred and eighty-five (285) cases tried resulted in sentences of confinement not suspended imposed against seventy-two (72) individuals, of whom fifty-three (53) were in confinement on 30 November 1955.

During the foregoing period the observers' reports in these cases show that liaison between Japanese and United States law enforcement agencies has been excellent; that court-appointed Japanese defense counsel have been of high calibre, trustworthy, conscientious, and capable; and that the safeguards provided for the protection of accused by the Administrative Agreement, as amended, by the Official Minutes thereto and "Agreed Views", and by the Japanese Constitution and laws, have been consistently observed in actual practice.

Although in a few instances suggestions of possible infringement of the rights of an accused have been made by an observer, subsequent investigation by the field commander of the accused's service has, in each instance, refuted or dispelled the suggestion. To date there has been no instance of the exercise by Japan of criminal jurisdiction over United States personnel in which the conduct of the proceedings has disclosed a basis for diplomatic intervention in accordance with the Senate Resolution procedures. One such instance is now under consideration.

Among the records officially maintained by my Division is a copy of a translation of the original indictment, dated 5 October 1955, in the Maebashi District Court, Japan, in the case of Walter R. McKenzie, Corporal, United States Army, Kenneth J. Reynolds, Private First Class, United States Army, Jesse F. Nordyke, Specialist Third Class, United States Army, and Alan C. May, Private First Class, United States Army. A copy thereof is attached hereto as Annex I.

Among the records officially maintained by my Division are the Individual Case Reports (Report Control Symbol—JAG 23) prepared on DD Form 837, in accordance with the requirement of Army Regulations 633-54, 4 August 1955, by Headquarters, United States Army Forces, Far East and Eighth

United States Army, concerning each criminal case involving United States Army personnel in which the United States has been denied a waiver of jurisdiction with respect to offenses subject to the jurisdiction of Japan. The original Individual Case Reports in the Cases of Walter R. McKenzie, Corporal, United States Army, Kenneth J. Reynolds, Private First Class, United States Army, Jesse F. Nordyke, Specialist Third Class, United States Army, and Alan C. May, Private First Class, United States Army, dated 6 October 1955, and received in the Office of The Judge Advocate General, Department of the Army on 18 October 1955, are held in the official files of my Division; copies thereof are attached hereto and made a part hereof as Annexes J, K, L, and M.

HOWARD S. LEVIE,
Colonel, JACC.

COUNTY OF ARLINGTON,
State of Virginia, ss:

Subscribed and sworn to before me this 25th day of January 1956. My commission expires 7 September 1956.

[SEAL]

A. F. SPADA,
Notary Public.

EXHIBIT 1

INDICTMENT

5 OCTOBER 1955.

To Maebashi District Court:

Public action is hereby instituted in the case of the following accused.

(Signed) TARO HIRAI,
Trial Procurator,
Maebashi District Procurator's Office.

1. *Data as to the accused:*

Walter R. McKenzie, Corporal, United Army, RA 16427020, Date of birth: 8 August 1934, Company "C", Eighth Engineer Battalion, First Cavalry Regiment, Camp Stilwell. Home Address: 23369, Eastering Street, Hazel Park, Detroit, Michigan, United States of America.

Kenneth J. Reynolds, Private First Class, United States Army, RA 18351707, Date of birth: 25 May 1933, Company

"C", Eighth Engineer Battalion, First Cavalry Regiment, Camp Stilwell. Home Address: 97, McGee, Arkansas, United States of America.

Jesse F. Nordyke, Specialist Third Class, United States Army, US55417638, Date of birth: 13 March 1933, Company "C", Eighth Engineer Battalion, First Cavalry Regiment, Camp Stilwell. Home Address: Minneapolis, Kansas, United States of America.

Alan C. May, Private First Class, United States Army, RA 15476721, Date of Birth: 31 May 1934, Company "C", Eighth Engineer Battalion, First Cavalry Regiment, Camp Stilwell. Home Address: 1421, 77th Street, Cleveland city, Ohio, United States of America.

2. *Specification:*

In that the accused, Walter R. McKenzie, Kenneth J. Reynolds, Jesse F. Nordyke and Alan C. May, all of whom on the night of 4 September 1955 absented themselves without proper authority from Camp Stilwell, their station, and out of whom

(1) the accused Walter R. McKenzie and Alan C. May, acting in concert with one another on the following 5 September 1955, during the period of 0010 hours to 0030 hours, in the vicinity of the premises of an eating establishment "Nobuo-tei" located at Number 32, Enoki-cho, Maebashi city, and on the road adjacent thereto, upon encountering Policeman Haruichi Kanayama, age 21, on duty at Kurumabashi Police-box, Maebashi Police Department, who was responding to the complaint of Michio Tomaru, a green grocer, to the effect that United States armed forces personnel are acting in disturbance of peace and damaging property and was proceeding to the above address to conduct investigation, and upon being seen by the said policeman that several United States armed forces personnel including the accused were carrying a sign board and a step-ladder, the property of "Futaba Sushi", an eating establishment located at 31, Enoki-cho, Maebashi city, and about to damage these property; and when the said policeman warned and attempted to question them in his official capacity as law enforcement officer, did throw away the sign board and other objects, and the accused Alan C. May did, by means of a bamboo

pole commit assault upon said policeman by wielding and thrusting the policeman with the pole, and the accused Walter R. McKenzie did commit assault upon said policeman by throwing a log and a used waterpail against the said policeman; that the accused thereby inflicted upon said policeman certain injuries requiring one week's medical treatment, to wit: laceration of lower lip, and did obstruct the execution of law enforcement of said policeman.

(2) the accused Alan C. May, Kenneth J. Reynolds and Jesse F. Nordyke, upon encountering in the vicinity of Asaka Taxi located at 36, Enoki-cho, Maebashi city, at about 0040 hours, 5 September 1955, Policeman Daizo Okada and several other policemen from Maebashi Police Department who were dispatched to apprehend United States armed forces personnel who, as above stated, were acting in disturbance of peace, and upon being informed by said Policeman Okada in English language "I am a police officer, and I am placing you under arrest for your wrong-doings" or words to that effect, did, acting conjointly and in concert with one another, attempt to evade the apprehension, and taking the opportunity of the fact that the accused Alan C. May forcibly snatched a club from said policeman and struck his head, all accused simultaneously becoming offensive did commit assault upon said policeman and several others, to wit: the accused Alan C. May striking the said policeman and several others with the club; the accused Kenneth J. Reynolds striking the said policeman and several others by means of a bamboo pole, a piece of board and a log; the accused Jesse F. Nordyke throwing stones, pieces of board and glass bottles against said policeman and several others, and did, in so doing, inflict respectively upon said Policeman Okada certain injuries requiring three weeks for recovery, to wit: lacerations of left facial and left temporal regions; upon Police Sergeant Shozaburo Tobita of Maebashi Police Department certain injuries requiring five days' medical treatment, to wit: contused wound of right forehead; upon Policeman Tokuo Umeyama of Maebashi Police Department certain injuries requiring one week's medical treatment, to wit: contused wound of right scapular region; upon Policeman Takeo Kimura of Maebashi Police Department abrasion of left antibrachial re-

gion; and upon Policeman Kei Sumida of Maebashi Police Department certain injuries requiring one week's medical treatment, to wit: lacerated wound of left antibrachial region; that the accused did thereby obstruct the execution of law enforcement of the above policeman.

3. Charge:

Obstruction of the Execution of Law Enforcement and assault—

Paragraph 1, Article 95, Articles 204 and 60 of Criminal Code.

3 NOVEMBER 1955.

Oath of Translator

I, the undersigned, hereby certify that, to the best of my ability and belief, the foregoing, consisting of 3 pages, is a true and correct translation of the original Japanese document.

(S) Ko Takenaka,

KO TAKENAKA,

Judge Advocate Section,

Hqs. Central Command, APO 500.

EXHIBIT 2. SUBCOMMITTEE ON JURISDICTION, ADMINISTRATIVE AGREEMENT MATTERS, CRIMINAL PANEL

The matters of procedure, definition and interpretation set out below have been agreed to by the United States and Japanese members of the Criminal Panel, Jurisdiction Subcommittee, with respect to the Protocol and Official Minutes of 29 September 1953, amending Article XVII of the Administrative Agreement between the United States and Japan.

PART I. LAW ENFORCEMENT PROCEDURES

No. 1: The identity card mentioned in paragraphs 3 and 4 of Article IX of the Administrative Agreement will be bi-lingual in form (Japanese-English). Identification will be accomplished by the continued use of the present bi-lingual card, in addition to the required United States Identity Card. This bi-lingual card will contain the name, signature, organization, date of birth, date of issue, nationality and United States

identity card number of the bearer, but will not carry the bearer's picture. Neither identity card will be required for children under twelve years of age. The bi-lingual card will not be required for members of the civilian component if their identity card bears the same information in the Japanese language. Used in conjunction with the present United States identity card, the bi-lingual identity card can be compared by number with the former, thus affording use of the picture and other data thereon. The same system will be used for the civilian component and for dependents when necessary.

No. 2: It is desirable that United States Armed Forces law enforcement personnel (such as MP, SP, AP, CID, and CIS), who engage in military police activities in Japan, carry a bi-lingual identity card containing the bearer's name, position, and the fact that he is a member of a law enforcement agency. This card would be shown upon request to persons concerned when the bearer is in the performance of duty.

No. 3: The United States Armed Forces will furnish, upon request, to Japanese authorities the form of the identification cards of the members of the United States Armed Forces, the civilian component, and their dependents and descriptions of the various uniforms of the United States Armed Forces in Japan.

No. 4: Instructions have been issued and will be reissued periodically to members of the United States Armed Forces, the civilian component and their dependents, which emphatically direct United States personnel to obey the laws of Japan and the instructions and signals of the Japanese police.

No. 5: (a) The maintenance of order and discipline among members of the United States Armed Forces outside facilities or areas utilized by such forces is a function of the United States Forces law enforcement agencies. The United States Forces law enforcement agencies may exercise their function of maintaining order and discipline among the civilian component and dependents outside such facilities or areas, subject to the conditions which may be proposed by the Japanese authorities and promulgated by the Joint Committee. The above statement shall not be interpreted to prejudice in any way the functions of

either the Japanese or the United States law enforcement agencies.

(b) When both United States Armed Forces and Japanese law enforcement personnel are present on the scene where any violation of law occurs, the arrest of the members of United States Armed Forces, the civilian component or their dependents should be made by the United States law enforcement personnel and such arrested persons should be brought to the nearest Japanese Police Station. After preliminary interrogation by the Japanese authorities, the arrested person will remain with the United States authorities, and if it is a case over which Japan has the primary right to exercise jurisdiction, such arrested person will be made available for joint United States—Japanese investigations as provided for in No. 24, following. If, however, the Japanese authorities determine that the case is of material importance to Japan and that there is adequate cause and necessity for Japan to assume custody over such arrested persons, custody may thereafter be transferred, upon request, to the Japanese authorities.

(c) The United States Armed Forces law enforcement personnel, after coordination with Japanese authorities, will patrol trains utilized solely by United States Armed Forces. There will be close cooperation and liaison between Japanese law enforcement agencies and United States Armed Forces law enforcement personnel and, where practicable, joint Japanese Police and United States Armed Forces law enforcement patrols will be utilized. It is desirable that Japanese Police authorities provide limited accommodations, where available, for United States Armed Forces law enforcement personnel for liaison and patrol activities, at Japanese Police Stations in areas where considerable members of United States Armed Forces are present.

No. 6: Local Provost Marshals will notify Japanese Police agencies of areas or establishments which have been declared "Off Limits" for United States Armed Forces personnel, the civilian component, and their dependents.

No. 7: (a) Pursuant to the provisions of the Official Minutes referring to paragraph 10 of the Protocol, arrests may be made without warrant by United States law enforcement per-

sonnel in the vicinity of facilities or areas in use by the United States Armed Forces of any person in the commission or attempted commission of an offense against the security of that facility or area.

(b) The United States law enforcement personnel may, in the vicinity of vital military property, such as vessels, aircraft, major weapons, ammunition and classified material, wherever situated in Japan, arrest without warrant any person in the commission or attempted commission of an offense against the security of that property or check him from the commission of such offense, when they have no time to request the action of Japanese law enforcement authorities. In such cases, the United States law enforcement personnel shall abide by the regulations of the Forces and shall not use any weapon, except when such cases come under paragraph 1 of Article 36 or paragraph 1 of Article 37 of the Penal Code of Japan.

No. 8: Bounds of facilities and areas which are in use by the United States Armed Forces under Article II of the Administrative Agreement and into which unauthorized entry is prohibited shall be clearly marked with bi-lingual signs or markers stating substantially the following:

United States Area (Facility),
United States Forces Japan,
Unauthorized entry punishable by Japanese law.

A list and legal description of areas and facilities will be published in the Official Gazette of Japan, and also in an official publication of the United States Armed Forces. However, certain facilities and areas, because of their military nature, will not be included in the lists made public.

No. 9: (a) When members of the United States Armed Forces, the civilian component or their dependents are arrested by the Japanese authorities, the arresting officers will immediately notify the nearest Provost Marshal of the United States Armed Forces that such arrest has been made and will turn the prisoner over to him when the primary right to exercise jurisdiction rests with the United States or when it is questionable whether the alleged offense arose out of the performance of official duty. Immediate notification will be made by the

United States authorities of the determination as to the official duty status of the offender. When the primary right to exercise jurisdiction over such arrested person rests with Japan, an immediate determination shall be made by the Japanese authorities as to whether there is adequate cause and necessity to retain such offender, and if not, such person will be released to the custody of the United States authorities, subject to the provisions of paragraph 11 (a), following. Thereafter the United States Authorities shall, upon request, transfer the custody of such person to the Japanese authorities at the time he is indicted by the latter.

(b) Notification under paragraph 2 of the Official Minutes relating to paragraph 5 of the Protocol shall be immediately made to the nearest Japanese Police officer by the local Provost Marshal who made the arrest. The persons referred to in paragraph 2 of the Official Minutes relating to paragraph 5 of the Protocol, when arrested by the United States authorities, will be made available upon request to the Japanese authorities for joint United States—Japanese investigations as provided for in paragraph 24, following.

No. 10: Persons subject solely to the jurisdiction of Japan who have been arrested by United States authorities will be turned over immediately to Japanese authorities by the local Provost Marshal making the arrest. Japanese authorities will be informed of the reasons for such arrests in advance of the turning over of the prisoner to the Japanese.

No. 11: (a) When Japanese authorities turn over arrested members of the United States Armed Forces, the civilian component, or their dependents subject to the military law of the United States, the Japanese authorities shall prepare a standard form for turning over the person wherein date of turning over, the name of the office of the United States Armed Forces receiving the person, the rank and name of the officer who receives the person shall be entered. The standard form shall be signed by such officer and kept on file by both United States and Japanese authorities. If the condition of the release is that the arrested person shall be made available to Japanese authorities, as provided in paragraph 1 of the Official Minutes relating

to paragraph 5 of the Protocol of 29 September 1953, the United States military authorities shall give such assurance to the Japanese authorities in the form mentioned above.

(b) When the police authorities of the United States Armed Forces have arrested persons who are subject to the primary jurisdiction of Japan within or in the vicinity of the facilities or areas in use by the United States Armed Forces and turn them over to the authorities of Japan, such police authorities shall prepare a document entering in it the date and place of arrest, the name of office, rank and name of the person who was arrested and a description of the alleged offense and deliver it to the Japanese authorities.

(c) One standard bi-lingual form shall be used to make the reports set forth in (a) and (b) above.

No. 12: Any request to the Japanese authorities for the arrest of any person in Japan will be made by the local Provost Marshal of the United States Armed Forces nearest to the contemplated place thereof. An official directive of the United States Armed Forces will specify the exact form of such request and, in addition to the reasons therefor, any other information to be included thereon. This form will be bi-lingual.

No. 13: When transfer of custody of arrested persons is to be effected, all means of expediting such transfer will be taken by both United States and Japanese authorities.

No. 14: When the police authorities of the United States Armed Forces have arrested members of the United States Armed Forces, the civilian component or their dependents, and there is suspicion that such persons have violated a Japanese law or ordinance, such authorities shall in appropriate cases deliver to the Japanese authorities the photographs and fingerprints of such suspects.

No. 15: When the authorities of Japan have arrested members of the United States Armed Forces, the civilian component, or their dependents, such authorities may take the fingerprints and photographs of such arrested persons. Suspects shall not, however, be fingerprinted or photographed with respect to such minor offenses as fall under Article 217 of the Code of Criminal Procedure of Japan, since arrests for such offenses are not made

unless the residence or identity of the suspect are unknown or the suspect attempts flight.

No. 16: The term "with the aid of the United States", as used in paragraph 1 (a) of Article XX of the Administrative Agreement, is interpreted to refer to the mutual cooperation and assistance that is contemplated within the meaning of paragraph 6 (a) of the Protocol. In this respect, United States Armed Forces law enforcement personnel are prepared to cooperate fully with the Japanese police authorities in all investigations pertaining to the unauthorized use or possession of Military Payment Certificates as set forth in Article XX of the Administrative Agreement.

No. 17: (a) United States Armed Forces law enforcement personnel may enter any dwelling house, guarded premise, building or vessel outside facilities or areas in use of the United States Armed Forces and make searches without warrant when necessary as an incident to "hot pursuit" to arrest a member of the United States Armed Forces, civilian component or their dependents if such person is a flagrant offender as defined in Article 212 of the Code of Criminal Procedure of Japan and the crime allegedly committed is serious.

(b) In incidents not covered by (a) above and when the United States authorities deem it necessary to make searches or seizures outside facilities or areas in use by the United States Armed Forces with respect to crimes allegedly committed by United States Armed Forces personnel, they should request Japanese law enforcement agencies to make such dispositions and United States law enforcement personnel may be present as observers at such searches or seizures conducted by Japanese law enforcement agencies. In any case United States Armed Forces law enforcement personnel may make searches and seizures of places occupied exclusively by persons described in Article I of the Administrative Agreement.

(c) The United States Armed Forces law enforcement personnel, in the course of maintaining order and discipline during routine patrols, shall have access to such public areas as railway stations, public entertainment buildings and areas and public recreation areas, provided that they shall not interfere

substantially with the performance of business of any individual.

No. 18: When death results to a member of the United States Armed Forces, the civilian component, or a dependent outside of facilities or areas in use by the United States Armed Forces, the scene of the incident must be preserved pending the arrival of Japanese authorities or United States Armed Forces law enforcement personnel. The United States authorities will conduct autopsies of the remains of members of the United States Armed Forces, the civilian component or their dependents when it is evident that the death was caused by a member of the United States Armed Forces, the civilian component, or their dependents. In all the other cases, autopsies will be conducted by Japanese authorities in conjunction with the appropriate United States authorities. In the event the arrival of United States Armed Forces law enforcement personnel is delayed, it is considered appropriate that the remains of the deceased should be removed to the police morgue, mortuary, or other suitable place.

No. 19: Individual cases of a trial and investigation of an offense concerning the security information of the United States Armed Forces will be referred by the Japanese authorities to the United States Armed Forces for their opinion as to whether the items in question are classed as security information. The reply to such inquiry will establish the nature of such items in this respect.

No. 20: In those instances where United States military aircraft crash or are forced to land on public or private property outside facilities and areas in use by the United States Armed Forces, appropriate representatives of the United States Armed Forces shall be permitted to enter private or public property without prior authority to perform necessary rescue services and/or secure United States property, provided that every effort shall be made to avoid unnecessary damage to such private and public property. Japanese public authorities will take necessary measures within their capabilities to secure the property and prevent danger until the arrival of United States authorities. The Japanese and United States authorities shall

exercise necessary joint control to restrict unauthorized personnel from the immediate vicinity of the accident scene.

No. 21: Requests by Japanese authorities for searches, seizures or inspections to be effected in facilities or areas in use by the United States Armed Forces or with respect to the property of the United States Armed Forces, wherever situated, will be made to the nearest Provost Marshal or Commanding Officer concerned. Prior notification by Japanese authorities of intended searches, seizures or inspections of a person or property of members of the United States Armed Forces, the civilian component or their dependents, which are located outside facilities and areas in use by the United States Armed Forces, shall be given whenever possible to the nearest Provost Marshal or Commanding Officer concerned. This view does not limit in any manner the authority of Japanese law enforcement personnel to make searches, seizures or inspections of persons or property of members of the United States Armed Forces, the civilian component or their dependents outside of United States facilities or areas in accordance with applicable laws and regulations.

No. 22: With respect to searches, seizures or inspection in criminal cases involving persons who are subject solely to the jurisdiction of Japan within the facilities or areas in use by the United States Armed Forces, the United States authorities will give due consideration to requests for attendance thereat by Japanese law enforcement agencies which are conducted in accordance with paragraph 10 of the Protocol and Official Minutes of 29 September 1953, amending Article 17 of the Administrative Agreement, and Articles 10 and 13, Japanese Law No. 138, 1952. In such instances personnel of Japanese law enforcement agencies will act as observers. This view does not limit in any manner the authority of the United States law enforcement personnel to make searches, seizures or inspections of persons or property within United States facilities or areas in accordance with applicable United States laws and regulations.

No. 23: When members of the United States Armed Forces, the civilian component, or their dependents are detained by

Japanese authorities, Japan shall pay due consideration to the differences in language and customs between Japan and the United States, and, shall not impose conditions of detention which because of those differences in customs might be prejudicial to the health of such detained persons. Account shall be taken of the habitual diet of such detained persons and adequate provision shall be made for visitation by their counsel and United States military authorities. The use of restraining devices will be limited to instances where force is required to prevent a detained person from causing bodily harm to himself or to others, or reasonably to prevent escape. Every effort will be made to avoid public display of restraint of such persons.

No. 24: In incidents occurring outside United States facilities or areas wherein the initial facts, evidence, data or information indicate that a member of the United States Armed Forces, civilian component or their dependents has committed a violation of Japanese law, or of United States Armed Forces law or regulation, the United States Armed Forces law enforcement personnel are prepared to assume responsibility to investigate such incident immediately upon receipt of notification thereof. Joint United States-Japanese investigations are desirable whenever the offense involves concurrent jurisdiction of both the United States and Japan. United States Forces authorities are prepared to cooperate with and solicit the assistance of the Japanese Police authorities in all such incidents occurring outside United States facilities or areas when appropriate.

No. 25: It is highly desirable to have Japanese Police personnel assigned on a full time basis to United States Armed Forces law enforcement offices located in facilities and areas in use by the United States in order to facilitate law enforcement.

No. 26: (a) All officers and agencies of the United States Armed Forces desiring the presence of Japanese witnesses or evidence before courts, boards, or for the purpose of official investigations, should submit a written request upon a form to be specified by an official United States Armed Forces directive, to the local Provost Marshal. That officer will in turn submit the request to the nearest Procurator's office or judicial police official or Judge, so that a summons may be issued. Such request

for personal appearance of a Japanese witness will be made only after due consideration has been given to the utilization of a deposition. The rates and pay scales for witnesses set out in directives of the United States Armed Forces, or the pay scales used by Japanese courts for witnesses will be utilized.

(b) When Japanese authorities desire members of the United States Armed Forces, the civilian component, or their dependents as witnesses, they should make their requests through the Japanese Judge, Procurator, or judicial police officer to the local Provost Marshal, and such requests will be forwarded to the Commanding Officer of the desired witness, whose responsibility it shall be to have the request complied with. Rates and pay scales for such witnesses shall be those used by Japanese courts for witnesses.

No. 27: (a) All expenses incident to the arrest, detention, or custody of an accused shall be defrayed by the government exercising such control over the accused.

(b) All expenses incident to the production of a witness shall be defrayed by the government calling the witness.

No. 28: The provisions of paragraph 6 of the Protocol are interpreted to mean that property or matter needed as evidence shall be turned over to either Japanese or United States authorities, as appropriate, so as to be of benefit both prior to and during the trial. Any such property or matter shall be turned over upon request by either government prior to trial for laboratory analysis and examination by experts whether the requesting government is to conduct the trial or not. The handing over of such objects may, however, be made subject to their return within the time specified by the government delivering them.

No. 29: When the police authorities of the United States Armed Forces have arrested personnel of the United States Armed Forces who have committed, by use of pistols, offenses over which Japan has the primary right to exercise jurisdiction, such authorities shall, in cases of material interest to Japan, upon request, test the pistols and deliver to the Scientific Investigation Laboratory of Japan exemplars from the suspect weapon.

No. 30: The term "offense", as used in paragraph 1 of the Official Minutes relating to paragraphs 10 (a) and 10 (b) of the Protocol, is interpreted to mean an offense against the security of vital military property of the United States, such as vessels, aircraft, major weapons, ammunition, and classified materiel, or of a United States facility or area, as defined in Japanese Law No. 138, 1952, on the subject and also any act not so defined which immediately imperils life or endangers property. The term "vicinity", as used in the above cited paragraph of the Official Minutes, is interpreted to mean a place so near to such United States property, facilities, or areas as to make possible the commission or attempted commission of a security offense.

No. 31: The following matters of interpretation with respect to Law No. 138 of 1952 of Japan entitled "Law for Special Measures Concerning Criminal Cases to Implement the Administrative Agreement" are agreed upon:

(a) The definition of "civilian component" set forth in Article 1, paragraph 4 of the Law, includes all members of the crews of vessels under time charter to the United States Government or its agencies, but not members of crews of vessels under voyage or space charter to the United States Government or its agencies.

(b) The reference in the last sentence of Article 2 of the Law, to the "Penal Code (Law No. 45 of 1907)" is interpreted to mean that the punishment stated in Article 130 of the Japanese Penal Code will apply for offenses under the said Article 2 only if an offense thereunder also comes within the provisions of Article 130 of the Penal Code.

No. 32: The Japanese government will inform its customs and police officials of the nature of marking classified United States material in order to help prevent espionage and the removal of such material from Japan.

No. 33: United States and Japanese authorities will furnish each other on a reciprocal basis through the Joint Committee the punitive laws of each country which frequently may apply to cases where there is concurrent jurisdiction under the Protocol, in both the Japanese and English languages.

No. 34: Licenses for the possession by United States Armed Forces personnel, the civilian component, or their dependents of hunting guns are issued in accordance with Japanese law. If applications for the issuance of these licenses are collected by local Provost Marshals and other suitable agencies who will turn over such applications to the Japanese authorities, the Japanese authorities will pay favorable consideration to the issuance of licenses.

No. 35: In compliance with Article X of the Administrative Agreement, the words "Driving Permit" in Japanese language shall be inscribed on the driving permits and driving licenses issued by the United States to members of the United States Armed Forces, civilian component, and their dependents, and the military driving permits.

No. 36: Under the authority of the Official Minutes relating to paragraphs 10 (a) and (b) of the Protocol, when a valid judgment of a Japanese court is given concerning property situated within a facility or area in use by the United States Forces, Japan (which property is not owned or utilized by the United States Government), a written request for such property, accompanied by a valid writ of execution issued in accordance with the judgment, will be presented to the Commanding Officer of the area or facility wherein the property is located. Thereafter the Japanese authorities will be permitted to levy upon or seize the specific property covered by the court judgment.

20 October 1953.

ALAN B. TODD,
Lt. Col., JAGC,

*United States Subcommittee on Criminal
Jurisdiction and Committee on Jurisdiction.*

TSUDA, MINORU,
Chairman,

Japanese Subcommittee on Criminal Jurisdiction.

TSURUOKA, SENJIN,
Chairman,

Japanese Committee on Jurisdiction.

Affidavit of Alan B. Todd

(Filed January 26, 1956)

COMMONWEALTH OF VIRGINIA,
County of Arlington, ss:

Alan B. Todd, being duly sworn, deposes and says:

That he is a Colonel in the United States Army assigned to duty as Assistant Chief of the Military Affairs Division, Office of The Judge Advocate General of the Army, Washington, District of Columbia;

That prior to September 1953, and until September 1954, he was a Lieutenant Colonel in the United States Army stationed in Japan, assigned to duty as Chief of the Military Justice Division, Office of the Staff Judge Advocate, Headquarters, United States Army Forces, Far East;

That during the time aforesaid deponent was the duly appointed chairman of the United States Subcommittee on Criminal Jurisdiction and Committee on Jurisdiction acting under the Joint Committee established pursuant to Article XXVI of the Administrative Agreement between the United States and Japan entered into on February 28, 1952, under Article III of the Security Treaty between the United States and Japan entered into on September 8, 1951;

That attached hereto as Inclosure 1 is AFFE Pamphlet No. 27-1, entitled Criminal Jurisdiction in Japan, January 1954, published by Headquarters, United States Army Forces, Far East, which sets out from page 10 through page 27, matters of procedure, definition and interpretation with respect to the aforesaid Administrative Agreement and the Protocol thereto, entered into on September 29, 1953, agreed to on October 20 and 28, and November 27, 1953, by the United States and Japanese Subcommittees on Criminal Jurisdiction and Committees on Jurisdiction;

That attached hereto as Inclosure 2 is a copy of a supplemental agreement made effective June 1, 1954, with respect to matters of procedure, definition and interpretation under the aforesaid Administrative Agreement and Protocol thereto, which were agreed to by the United States and Japanese Subcommittees on Criminal Jurisdiction sometime prior to June 1, 1954;

That with respect to the matter of detention of members of the United States Armed Forces, the civilian component and their dependents in Japan prior to and during their trial and appeal in Japanese courts, although the agreed procedures under the aforesaid Administrative Agreement and Protocol authorize transfer of such persons to the Japanese authorities at the time of indictment by the latter for offenses against Japanese laws, the standard practice during the time deponent served as chairman of the aforesaid Subcommittee on Criminal Jurisdiction and Committee on Jurisdiction, was for the Japanese authorities to leave such persons in the custody of United States authorities prior to the trial, during the trial, and during any appeal therefrom. Deponent states further that to the best of his knowledge and belief this practice has been continued to the present time.

ALAN B. TODD,
Colonel, JAGC.

COUNTY OF ARLINGTON,
State of Virginia, ss:

Subscribed and sworn to before me this 26th day of January 1956. My commission expires 7 September 1956.

A. F. SPADA,
Notary Public.

Affidavit of C. Robert Bard

(Filed January 31, 1956)

HEADQUARTERS

UNITED STATES ARMY FORCES, FAR EAST

AND

EIGHTH UNITED STATES ARMY

(REAR)

OFFICE OF THE JUDGE ADVOCATE,
APO 343, SAN FRANCISCO, CALIFORNIA.

AFFIDAVIT

I, Colonel C. Robert Bard, O-18435, Judge Advocate General's Corps, being first duly sworn, do depose and state:

I am the Judge Advocate of the United States Army Forces Far East and Eighth United States Army. I am stationed in Japan and I am familiar with provisions of the Japanese Constitution and the Japanese Code of Criminal Procedure. I am familiar with the terms of the Administrative Agreement under Article III of the Security Treaty between the United States and Japan, including the Protocol to Amend Article XVII of the Administrative Agreement, which Protocol became effective on 29 October 1953. I am also familiar with the agreements which implemented the Protocol and which were adopted by the Joint Committee created by Article XXVI of the Administrative Agreement. These implementing agreements are set forth in AFFE Pamphlet 27-1, January 1954, and in Changes 1 and 2. thereto.

Being the Chief Legal Officer of Army Forces Far East and Eighth United States Army, I have knowledge of the fact that the Japanese authorities, on 5 October 1955, indicted the following four servicemen of the United States Army for an offense alleged to have been committed at Maebashi on the night of 4-5 September 1955: Walter R. McKenzie, Kenneth J. Reynolds, Jesse F. Nordyke, and Alan C. May.

Under the terms of paragraph 9 (E) of the Protocol to Amend Article XVII of the Administrative Agreement under Article III of the Security Treaty, and under Japanese law (Article 37, Japanese Constitution; Articles 30, 31, 36, 39 Code Criminal Procedure) the four accused servicemen would be entitled to counsel of their own choice or, if unable to select counsel, to have court-appointed counsel. It is discretionary with the court whether the accused shall be required to pay the fees of the court-appointed counsel as part of the costs of the trial. If an accused is unable to pay the court costs and establishes this fact by a timely affidavit of poverty, the court will relieve him of the obligation to pay such costs.

On 24 November 1955, my office was advised by radio that the Secretary of the Army had directed that May be furnished civilian counsel of his own choice at Government expense, and on 26 November my office was advised that the Secretary had directed that the other three soldiers be furnished civilian counsel. I advised the U. S. Representative at the trial of the direction of the Secretary and my office was subsequently ad-

vised by the U. S. Representative that each of the four accused had selected Frank Scolinas, an American attorney with offices in Tokyo.

Under the procedures implementing the Protocol to Amend Article XVII of the Administrative Agreement between the United States of America and Japan, there is an implied request by the United States for a waiver of jurisdiction in every case involving an offense committed by United States personnel subject to military law over which Japan has the primary right to exercise jurisdiction. Such waiver is considered to be granted by Japan if the Japanese authorities fail to notify the United States authorities of their intention to exercise jurisdiction within certain prescribed periods of time. In those cases in which notification of an intention to exercise jurisdiction is given, the United States has ten days within which to submit to the Japanese authorities an additional written request for a waiver if the United States considers the case to be of particular importance.

On 5 October 1955, the United States military authorities in Japan were notified by the Japanese Ministry of Justice that Japan intended to exercise jurisdiction over the four servicemen. Under the administrative procedures mentioned above, this notification constituted a denial of the implied request for a waiver. When the notice was received, there was a careful and complete review of the circumstances of the case by the United States military authorities, and it was determined that there were no factors indicating that the accused might be deprived of a fair trial or fair treatment if tried by the courts of Japan. Accordingly, no further request was submitted to the Japanese Ministry of Justice within the ten day period.

Paragraph 5 (A) of the Protocol to Amend Article XVII of the Administrative Agreement under Article III of the Security Treaty between the United States and Japan provides that the military authorities of the United States and the authorities of Japan shall assist each other in the arrest of members of the United States Armed Forces and in handing them over to the authority which is to exercise jurisdiction. The agreed official minutes regarding this provision further provide that the

United States military authorities shall promptly notify the Japanese authorities of the arrest of any members of the United States Armed Forces in any case in which Japan has the primary right to exercise jurisdiction.

Subparagraph 5 (C) of the Protocol provides that the custody of an accused member over whom Japan is to exercise jurisdiction shall, if he is in the hands of the United States, remain with the United States until he is charged by Japan. In accordance with this provision, custody of the four servicemen was retained by the United States prior to the date charges were preferred, except in the case of McKenzie and Reynolds who, according to official records of my office, were initially apprehended by the Japanese authorities on 5 September 1955, but, within a matter of hours, were delivered to the United States authorities. Except as noted above, official records of my office disclose that the custody of the four servicemen has remained in the United States from the date of the alleged offense, 5 September 1955, to the present time.

C. Robert Bard,

C. ROBERT BARD,

Colonel, JAGC, Judge Advocate.

CAMP ZAMA, JAPAN, APO 343, ss:

Subscribed in my presence and sworn to before me this 21st day of January 1956.

Kenneth J. Hodson,

KENNETH J. HODSON,

Lt. Col., JAGC.

Affidavit of Shelton B. Biles

(Filed January 31, 1956)

HEADQUARTERS

CENTRAL COMMAND

APO 500

AFFIDAVIT

I, Shelton B. Biles, Commanding Officer, Company C, 8th Engineer Battalion (C), APO 201, being first duly sworn on oath depose and state as follows:

I assumed command of the Unit in September 1954. Private-1 (then Private First Class) Alan C. May, RA 15476721, was a member of the Unit at that time.

On 2 August 1955, private-1 (then Corporal) May became intoxicated and belligerent in the company area. I placed May in arrest to quarters to prevent his fighting another EM of the unit. A short time later I was informed that May had left his room. A search was made of the area, however, May could not be located. Approximately one hour later, I was informed that May had returned to his room. May was charged with violation of Article 95, UCMJ for breaking arrest to quarters and violation of Article 91 for disobeying the order of a superior noncommissioned officer. May was tried by Summary Court-Martial on these charges and on 19 August 1955, a sentence of reduction to the grade of Private (E-2) and restriction to the limits of Camp Stilwell, Honshu, Japan, APO 201 for 30 days was approved and ordered executed. Paragraph 2, SO #204, Headquarters 1st Cavalry Division, dated 30 August 1955 set aside so much of the sentence as is in excess of reduction to the grade of Private First Class (E-3) and restriction for thirty (30) days.

On or about 4 September 1955, May broke his restriction, left camp, and around 2400 hours became involved in an incident with the Japanese police in Maebashi, Honshu, Japan. Allegedly involved in this incident, along with May, were Private-1 (then Private-2) Walter R. McKenzie, RA 16427020, Private-1 (then Private First Class) Kenneth J. Reynolds, RA 18351707, and Specialist Third Class Jesse F. Nordyke, US 55417638, all assigned to my organization.

On 17 September 1955, May entered the Camp Stilwell NCO club and when asked to leave by the Club Steward became belligerent and turned over chairs and tables before being escorted out by the company duty NCO. May proceeded to the company day room where he again caused a disturbance. May then ran past the guard on the main gate of camp, entered a taxi and left, thereby breaking restriction imposed by his previous Summary Court. The Military Police were notified

that May had gone AWOL. Statements of the Military Police revealed that at approximately 1745 hours, 17 September 1955, they saw May in Maebashi and chased him for approximately six (6) blocks before subject was apprehended. After May was apprehended, he broke a set of handcuffs and tried to take the MP club from the Military Policeman. May was then taken to Camp Drew Provost Marshal Office for overnight detention. He was given a DD Form #578 (Delinquency Report) for (1) Destruction of Government property; (2) AWOL; (3) Breaking restriction; (4) Resisting apprehension, and (5) Attempting to break apprehension.

Charges were prepared and forwarded on 27 September 1955, recommending trial by Special Court-Martial for violation of Art 95 (resisting apprehension by the Military Police) and for violation of Article 134 (drunk and disorderly in the Camp Stilwell NCO Club and breaking restriction).

On 1 October 1955, May was apprehended by the Military Police in a non Grade "A" drinking establishment in Maebashi. He did not have an Armed Forces Liberty Pass, DD Form 345 in his possession. He was given a Delinquency Report for pass violation, out of uniform, and off-limits. At 2330 hours, 23 October 1955, May was missing from bed check. At 0545 hours the following morning, May was missing at reveille. At approximately 0915 hours, 24 October 1955, May returned to camp. Charges were prepared and forwarded for violation of Article 86 (AWOL) and Article 92 (violation of a lawful general regulation by being in an off-limits non Grade "A" drinking establishment). These charges were consolidated with those enumerated above at Headquarters, 8th Cavalry Regiment, APO 201.

On the night of 6 November 1955, May was drunk and disorderly in camp and I ordered him to go to bed and stay in his room. He went to his squad room; however, I later found May and Private Reynolds approaching the main gate. I halted them and had the duty NCO escort them to their squad rooms.

At approximately 0030 hours, 19 November 1955, I was in the Maebashi Police Station investigating an incident involv-

ing Private Kenneth J. Reynolds. While I was there, May came into the station. I instructed him to return to camp in my jeep and to remain there. Shortly thereafter Sergeant Ferguson and two members of his squad entered the station and informed me that May had once again left camp. I instructed them to search for May and return him to camp. I then left the station and saw May sitting in a beer hall in Mae-bashi. When my jeep stopped, May came outside and I saw that he was without shoes or shirt. I told him to get in the jeep with me and return to camp. He refused to do so and re-entered the beer hall. I called my jeep driver over and once again ordered May to accompany me to camp. Again he refused. I returned to Camp Stilwell and dispatched the duty NCO, SFC Fitch, and May's Platoon Sergeant SFC McCraw with instructions to bring May back to camp. However, Sergeant Ferguson apprehended May before the Duty NCO arrived and returned May to camp. May was then taken to Camp Drew for overnight detention and on the same day, 19 November 1955, I had May placed in pretrial confinement at U. S. Army Stockade, APO 500.

On 28 November 1955, May was tried by Special Court-Martial for the charges previously forwarded and sentenced to six months confinement and to forfeit thirty-eight dollars (\$38.00) per month for a like period. A copy of Special Court-Martial Order No. 204, Headquarters 8th Cavalry Regiment, 28 November 1955, is attached hereto as Inclosure 1. According to information received from the Staff Judge Advocate, 1st Cavalry Division, corrective action on this record of trial is being taken and specification 2 of Charge II and Charge IV and its specification are being disapproved; and only so much of the sentence as provides for confinement at hard labor for four months and forfeiture of \$38.00 per month for six months is being approved and ordered executed.

Charges arising out of the incident of 19 November 1955 were preferred on 31 December 1955, charging May with violation of Article 90, wilfully disobeying a lawful command. DD

Form 458 is attached as Inclosure 2. I recommended trial by General Court-Martial and to date final disposition of these charges have not been made.

Shelton B. Biles,
SHELTON B. BILES,
Capt., ENGR.

Subscribed and sworn to before me on 20 January 1956.

Abraham Nemrow,
ABRAHAM NEMROW,
CAPT., JAGC, Assistant Judge Advocate,
Headquarters AFPE/8A (REAR) APO 343.

2 Incls. a/s.

Second Affidavit of Shelton B. Biles

(Filed January 31, 1956)

HEADQUARTERS
CENTRAL COMMAND
.. APO 500

AFFIDAVIT

I, Shelton B. Biles, Commanding Officer, Company C, 8th Engineer Battalion (C), APO 201, being first duly sworn on oath depose and state as follows:

On 5 September 1955, I was Commanding Officer of Company C, 8th Engineer Battalion (Combat) and Private Alan C. May, Private Walter R. McKenzie, Specialist Third Class Jesse Nordyke, and Private Kenneth J. Reynolds were members of my organization.

On the night of 4-5 September 1955, the above named individuals were involved in an incident with the Japanese police in Maebashi, Honshu, Japan, and as a result thereof Private McKenzie was apprehended at 0045 hours, 5 September 1955, by Masaichi Kanayama, a Japanese policeman. Private Reynolds was apprehended at about 0100 hours, 5 September 1955, by Okio Kijima, and Oshiro Matsui, Japanese policemen. These two individuals remained in custody of Japanese police

until about 0430 hours, 5 September 1955 at which time they were transferred to the custody of the Military Police.

Private May was apprehended by the Military Police at about 0300 hours, 5 September 1955, within the confines of Camp Stilwell, a United States Military facility. Specialist Third Class Nordyke was not apprehended by either the Japanese or United States Military authorities.

Warrants of arrest were not obtained by the Japanese authorities for the apprehension of Privates McKenzie and Reynolds, or for the other individuals.

Private May has been confined in U. S. military confinement facilities since 19 November 1955 and was brought to the Japanese court sessions on 26 November, 3 and 16 December 1955, in the Maebashi District Court, under guard. When Private May appeared in court he was not under guard. Private Reynolds was confined in a U. S. military confinement from 19 November 1955 to 3 December 1955. He was brought to the court sessions on 26 November and 3 December 1955 in the Maebashi District Court under guard. When Private Reynolds appeared in court on those dates he was not under guard. At the session on 16 December 1955 he was no longer confined and was brought there by the military authorities.

Private McKenzie and Specialist Third Class Nordyke were brought by the military authorities to the court sessions on 26 November, 3 and 16 December 1955 in the Maebashi District Court.

It was my understanding at the time the accused were brought to the court sessions that during the sessions the Japanese authorities were responsible for the custody of the accused.

Shelton B. Biles,
SHELTON B. BILES,
Capt., ENGR.

Subscribed and sworn to before me on 20 January 1956.

Abraham Nemrow,
ABRAHAM NEMROW,
Capt., JAGC, Assistant Judge Advocate,
Headquarters AFPE/8A (REAR) APO 343.

Third Affidavit of Shelton B. Biles

(Filed January 31, 1956)

HEADQUARTERS
CENTRAL COMMAND
APO 500

AFFIDAVIT

I, Shelton B. Biles, Commanding Officer, Company C, 8th Engineer Battalion (C), APO 201, being first duly sworn on oath, depose and state as follows:

I assumed command of this unit in September 1954 and am presently its Commanding Officer. Private Alan C. May, Private Walter R. McKenzie, Private Kenneth J. Reynolds, and Specialist Third Class Jesse F. Nordyke are members of my organization.

At approximately 1900 hours, 30 September 1955, McKenzie, without a pass, left the post (Camp Stilwell, Honshu, Japan) and proceeded to Karuizawa, Japan. At Karuizawa, McKenzie was apprehended by the Military Police and given a Delinquency Report for being AWOL and drunk and disorderly in a public place. Charges were forwarded recommending trial by Summary Court-Martial for AWOL and for drunk and disorderly in a public place. On 23 November 1955, a sentence to perform hard labor without confinement for 45 days and forfeiture of \$60.00 was approved and ordered executed.

At 2330 hours, 16 December 1955, McKenzie was absent at bed check. He was also absent at reveille the following morning. At approximately 1100 hours, 17 December, McKenzie was apprehended in Maebashi City and returned to camp by a member of my organization. On 22 December 1955 McKenzie failed to appear at guard mount. On 26 and 27 December, McKenzie refused to perform hard labor as directed in his Summary Court sentence, even when he was ordered to do so by First Lieutenant John A. Sulik. On 29 December 1955, charges were preferred against McKenzie for violation of Ar-

ticle 92 (by disobeying the lawful orders of First Lieutenant John A. Sulik on 26 December and on 27 December) and for violation of Article 86 (by being AWOL from 2330 hours, 16 December 1955 to 1100 hours 17 December 1955, and failure to go to his appointed place of duty, to wit: Guard Mount on 22 December 1955).

On 5 January 1956 Private McKenzie was tried by Special Court-Martial and found guilty of all Charges and specifications. He was sentenced to be confined at hard labor for six (6) months and to forfeit sixty-five dollars (\$65.00) per month for a like period. McKenzie is presently in the United States Army Stockade, APO 500. Attached hereto as Inclosure 1 is the Special Court-Martial Order pertaining to this case.

On 10 October 1955 Reynolds was apprehended by the Military Police in an off-limits non-grade "A" drinking establishment and given a Delinquency Report for this offense. On 22 October 1955 Reynolds failed to get up for reveille formation, even though awakened by his squad leader. At 2330 hours, 23 October 1955, Reynolds was absent from bed check and did not return to the unit until approximately 0715 hours, 24 October 1955. Charges were preferred against Reynolds for failing to go to his appointed place of duty, to wit: Reveille formation on 22 October 1955, for AWOL from 2330 hours, 23 October 1955 until 0715 hours, 24 October 1955, and for entering an off-limits non-grade "A" drinking establishment on 1 October 1955. Reynolds was tried by Summary Court-Martial and a sentence of hard labor without confinement for forty-five (45) days and forfeiture of \$60.00 was approved and ordered executed on 1 December 1955.

On 6 November 1955, Reynolds was drunk and disorderly in camp and I ordered him to go to bed and remain there. Reynolds went to bed; however, I later found Reynolds accompanied by May approaching the main gate. I halted them and had the Duty NCO escort them to their squad rooms.

On 18 November 1955, I received information that the Japanese authorities had apprehended Reynolds for alleged assault on a Japanese national male. I proceeded to the Maebashi Police Station at approximately 2400 hours and found Reyn-

olds there. He was very intoxicated at the time and had been drinking in a small beer hall in Maebashi. While there he had struck a Japanese male with his fist thereby knocking him against a window cutting a small gash in his head. The Military Police were notified and they took over the investigation. On 19 November 1955, I placed Reynolds in pretrial confinement.

Reynolds was released from confinement on 3 December 1955. At 2330 hours, 16 December 1955, Reynolds was absent from bed check. He was absent at reveille the following morning and was apprehended by the Military Police in Maebashi at approximately 2130 hours, 17 December 1955. On 23 December 1955, Reynolds refused to perform hard labor as directed by his previous Summary Court sentence. He was ordered to perform this hard labor by the person given the task of supervising this labor and still refused. On 29 December 1955, charges were preferred against Reynolds for violation of Article 92 by refusing to obey a lawful order of Sergeant First Class Robert L. Wright to perform hard labor on 23 December 1955, and for violation of Article 86 for being AWOL from 2330 hours, 16 December 1955 until 2130 hours, 17 December 1955. Reynolds was tried by Special Court-Martial on 5 January 1956, was found guilty of the Charges and specifications and was sentenced to be confined at hard labor for six (6) months and to forfeit sixty-five dollars (\$65.00) per month for a like period. Reynolds is presently confined in the U. S. Army Stockade, APO 500. Attached hereto as Inclosure 2 is the Special Court-Martial Order issued in this case.

Since the incident in which he was involved with Japanese police on 5 September 1955, Specialist Third Class Jesse Nordyke has not been involved in any incidents or events. He has been on a duty status with the organization since that time.

Court-Martial charges alleging offenses covered by Japanese indictment have been preferred against all accused and are pending final results of trial by Japanese courts. DD Forms 458 are attached hereto as Inclosures 3, 4, 5, and 6.

Privates May, McKenzie, and Reynolds are members of the Regular Army. Private May reenlisted in Japan on 15 November 1954 for a period of four years. Private McKenzie

reenlisted in Japan on 27 October 1954 for a period of six years. Private Reynolds reenlisted in Japan on 3 May 1954 for a period of six years.

Shelton B. Biles,
SHELTON B. BILES,
Capt., Engr.

Subscribed and sworn to before me on 20 January 1956.

Abraham Nemrow,
ABRAHAM NEMROW,
*Capt., JAGC, Assistant Judge Advocate,
Headquarters AFFE/8A (REAR) APO 343.*

6 Incls. a/s.

Affidavit of Richard Reichmann

(Filed January 31, 1956)

HEADQUARTERS
CENTRAL COMMAND
APO 500

AFFIDAVIT

I, Richard Reichmann, Staff Judge Advocate, Headquarters Central Command, being first duly sworn on oath depose and state as follows:

I am and have been personally acquainted with Mr. Ko Takenaka, now employed in the Japanese Law and Liaison Division of the Judge Advocate Section, Headquarters Central Command, Tokyo, Japan, since on or about 10 May 1954 when I arrived at Headquarters Southwest Command, Otsu, Japan to become Staff Judge Advocate. Mr. Takenaka was then employed in the Judge Advocate Section as Interpreter and had previously been so engaged for a considerable time prior to my arrival. He is outstandingly competent as a translator and oral interpreter either from English into Japanese or from Japanese into English and my observation and opinion of him in this regard makes me conclude that he is one of the outstanding interpreters of Japanese citizenship in Japan. I base

this conclusion upon previous experience with interpreters during the period of 1946 to 1949 when I was Chief of the War Crimes Division of the Judge Advocate Section, Headquarters Eighth Army, in Yokohama, Japan at which time I had in the division upwards of fifty to sixty Nisei interpreters as official court interpreters in the war crimes trials, and I consider Mr. Takenaka the equal of any of them and superior to many.

Richard Reichmann,
RICHARD REICHMANN,
Colonel, JAGC.

Subscribed and sworn to before me 20 January 1956.

W. Frank Mustian,
W. FRANK MUSTIAN,
Captain, Inf.,
Summary Court, Judge Advocate Section,
Headquarters Central Command, APO 500.

Affidavit of John J. Douglass

(Filed January 31, 1956)

HEADQUARTERS
CENTRAL COMMAND
APO 500

AFFIDAVIT

I, John J. Douglass, Major, JAGC, having been duly sworn, do on oath depose and say:

That I am the Executive Officer and Chief of Military Justice of the Judge Advocate Section, Headquarters Central Command, and as such am the rating officer for 1st Lt Victor A. DeFiori and 1st Lt Robert G. Tallman. By virtue of my duties, I am in intimate daily contact with each of these individuals, who serve as trial and defense counsel for the general courts-martial of this command. I have served in this relationship with Lt DeFiori since 2 August 1955, and have served in the same Judge Advocate Section with him since March 1955. I have served in this capacity with Lt Tallman since 4 August

1955, immediately upon his arrival in the Far East Command.

As the immediate superior of these two individuals, I have had occasion to make an efficiency report upon both within the last ten days for the period ending 31 December 1955.

I rated Lt DeFiori very highly, and marked him as one of the few, exceptional officers who should be considered for more rapid promotion than his contemporaries and as one of the few highly outstanding officers I know, for his grade and branch. In my comment on this officer I particularly mentioned his fine grasp of the law and his practical and wise sense of justice. During the past year in this command he has been involved as trial and defense counsel in over 80 general courts-martial. A previous report written by him as the United States Representative was one of the best I have read. He has a thorough grounding in the rights of an accused granted by the Administrative Agreement.

In my rating of Lt Tallman, I indicated that he gives a very fine performance and is an officer who is a great asset to the service. In my description of this officer I further noted that he has a fine grounding in the law and is most conscientious in his attention to duties. Under my direct observation, he has participated as trial and defense counsel in approximately 25 general courts-martial. His prior work as the United States Representative indicates he has a thorough knowledge of the rights of an accused in a Japanese court.

I would have no hesitancy in relying on the legal ability and judgment of these two officers in an official or personal capacity.

I have known Mr. Ko Takenaka, a translator-interpreter in this office, since 1 September 1955. In my capacity as Executive Officer of this section, I have come in intimate daily contact with him and have had numerous occasions upon which I have utilized his outstanding ability as an interpreter-translator of the Japanese language. He is a native-born Japanese and has a complete understanding of the niceties of that language, and by virtue of his superior knowledge of English is able to put across correctly and effectively the thoughts and words expressed by both parties in a Japanese-English conversation. I have been associated with a great number of interpreters by virtue of my duties in Japan for the past two years in the City

of Tokyo, and I have no hesitancy in saying that Mr. Takenaka is one of the most outstanding, and certainly the most outstanding of Japanese citizenship.

Further deponent sayeth not.

John J. Douglass,
JOHN J. DOUGLASS,
Major, JAGC.

Sworn and subscribed to before me, this 20th day of January 1956.

Edwin M. Schmidt,
EDWIN M. SCHMIDT,
Major, JAGC.

Affidavit of Robert G. Tallman

(Filed January 31, 1956)

HEADQUARTERS
CENTRAL COMMAND
APO 500

AFFIDAVIT

I, Robert G. Tallman, 1st Lieutenant, JAGC, Assistant Staff Judge Advocate, Headquarters Central Command, being first duly sworn on oath, depose and state as follows:

On 12 October 1955 I was appointed, with Lieutenant Victor A. DeFiori, a representative of the United States to attend the trial of Private Allen C. May, Private Walter R. McKenzie, Specialist Third Class Jessie Nordyke, and Private Kenneth J. Reynolds.

On 25 November 1955, I went to Camp Stillwell where I conducted an interview with each of the four accused and their Japanese counsel. I there learned that Nordyke was to be defended by counsel Masaei Ikeda, McKenzie by Mr. Aijiro Osawa, Reynolds by Mr. Iwao Yamada, and May by counsel Gibeiji Tsunoda. I have since that date been informed that these Japanese counsel were retained by the respective accused on or about 25 October 1955, after careful consideration, at their own expense. I have also learned that after making this

decision to retain counsel at their own expense that the four accused respectively decided to and did notify the District Court of Maebashi in writing on 25 October 1955 that they would not request the court to appoint counsel for them. The selected counsel do not speak English.

At my conference with the accused, I learned from them that they were aware of their right to have court appointed counsel, and that they wanted instead the counsel they had retained at their own expense, as set forth above. Speaking with the accused and their counsel (through interpreter Takanaka), I learned that they had had little chance to confer at that time, but counsel stated that after a conference with their clients that night they would be prepared for the first hearing the next day, in that they had had full cooperation of the military and Japanese police and authorities, and particularly in view of the limited scope of any first hearing in a Japanese court.

The Japanese counsel stated that while none of them had ever defended any soldiers before, they indicated that in view of their other experience, they felt qualified. After concluding my conference, during which I informed the four accused of their various rights under the Administrative Agreement and the amendments thereto, and also their rights under the Japanese constitution and laws, I ascertained that an interpreter was available for the accused to confer with their respective counsel and discuss the case and the defense. Such a conference was held.

The following day, I received word by telephone from my office that by direction of a Department of the Army message received at AFFE headquarters, I was to inform Nordyke, McKenzie, and Reynolds that they were entitled to hire civilian counsel at the expense of the Government. I then informed the three defendants of this right, and in writing they stated that they understood, and after discussing the matter among themselves, they each selected Mr. Scolinos to defend them. Signed copies of those statements are appended to this affidavit, as Inclosures 1, 2 and 3.

The first hearing convened on 26 November 1955, where all of the accused were present, the four Japanese counsel, Mr. Scolinos and his Japanese assistant from Tokyo. Mr. Scolinos

stated that he was then representing all four of the accused, and the other four Japanese lawyers, named above, were also to be retained. I have ascertained that these four Japanese counsel are still retained by the respective accused and are actively participating in the defense.

At the second hearing at the Maebashi District Court, Mr. Murray Sprung, an attorney of New York and Tokyo courts, was also present, assisting in the defense. At the third hearing, after motions and arguments, the next hearing was scheduled for 10 February 1956.

Robert G. Tallman,
ROBERT G. TALLMAN,
1ST LT, JAGC.

Subscribed and sworn to before me on 20 January 1956.

Abraham Nemrow,
ABRAHAM NEMROW,
CAPT, JAGC, Assistant Judge Advocate,
Headquarters AFPE/8A (REAR) APO 343.

EXHIBIT 1

26 NOVEMBER 1955.

I have been advised by Lt. Tallman this date 26 Nov. 1955, that I may obtain civilian counsel at the expense of the Department of the Army. I was given sufficient time to think about it and have decided to sustain Mr. Frank H. Scolinas for my defense counsel.

Kenneth J. Reynolds,
KENNETH J. REYNOLDS,
Pvt, RA 18 351 707
Co "C", 8th Engr Bn 1st Cav Regt.

EXHIBIT 2

26 NOVEMBER 1955.

I have been advised that the government will pay for a civilian lawyer for me. We talked it over among us and we all think Mr. Scolinos would be O. K.

Jesse F. Nordyke,
JESSE F. NORDYKE,
SP3, US 55 417 638.

EXHIBIT 3

26 NOVEMBER 1955.

I was advised that I could have a American or Japanese consul at gov't expense and I have chosen Mr. Scollines as my Defense for the case, and I've had a chance to think it over.

Walter R. McKenzie,
WALTER R. MCKENZIE,
Pvt, RA 16 427 020,
Co "C", 8th Eng Bn (c).

Affidavit of Victor A. DeFiori

(Filed January 31, 1956)

HEADQUARTERS
CENTRAL COMMAND
APO 500

AFFIDAVIT

I, Victor A. DeFiori, 1st Lieutenant, Assistant Staff Judge Advocate, Headquarters Central Command, APO 500, being first duly sworn on oath, depose and state as follows:

On or about 12 October 1955, I was appointed as alternate United States Representative in the Japanese criminal trial of Private Allen C. May, Private Walter R. McKenzie, Specialist Third Class Jessie Nordyke, and Private Kenneth J. Reynolds. On or about 25 November 1955, I was instructed by Major John J. Douglass, Chief of Military Justice, Judge Advocate Section, Headquarters Central Command, APO 500, to inform Private May that he would be entitled to select his own defense counsel and that the expenses of such counsel would be paid by the United States government. I saw Private May on the same day at the United States Army Stockade, Tokyo, Japan, and informed him of what Major Douglas told me. I provided him with a list of the American civilian attorneys in the Tokyo-Yokohama area, and he selected Mr. Frank

Scolinos as his counsel. This list of American civilian attorneys was published by the Consular Division of the American Embassy, Tokyo, Japan. Private May signed a short statement to the effect that he had selected Mr. Scolinos as his counsel and that he intended to retain Mr. Tsenoda at his own expense. A duplicate original of Private May's statement is attached to this affidavit as Inclosure 1. This is the only time I met or spoke to Private May. I have had no contact with any of the other defendants.

Victor A. DeFiori,
VICTOR A. DE FIORI,
1ST LT, JAGC.

Subscribed and sworn to before me on 20 January 1956.

John J. Douglass,
JOHN J. DOUGLASS,
MAJ, JAGC, Assistant Staff Judge Advocate,
Judge Advocate Section,
Headquarters Central Command, APO 500.

EXHIBIT 1

STATEMENT

Having been advised by 1st Lieutenant Victor A. DeFiori, the appointed United States representative for my trial in Japanese courts, of my right to counsel of my selection, the expense for which will be paid by the United States Government, it is my wish that the following steps be taken: That Mr. Frank Scolinos of Tokyo, be retained as my counsel.

I will also retain Mr. Tsenoda at my own expense.

Alan C. May,
ALAN C. MAY,
Private First Class, RA 15476721,
Company C, 8th Engr Combat Bn,
1st Cavalry Division, APO 201.

Affidavit of Ko Takenaka

(Filed January 31, 1956)

HEADQUARTERS
CENTRAL COMMAND
APO 500

AFFIDAVIT

I, Ko Takenaka, No. 171, Ikejiri-cho, Setagaya-ku, Tokyo, Japan, first having been duly affirmed, depose and say:

That I am the Advisor-Interpreter of the Japanese Law and Liaison Division of the Judge Advocate Section, Headquarters Central Command, and as such, I have accompanied 1st Lt. Robert G. Tallman, JAGC, United States Representative in the case of Private Alan C. May, Private Kenneth J. Reynolds, Specialist Third Class Jessie J. Nordyke and Private Walter K. McKenzie as his interpreter on all the hearings held at Maebashi District Court, Maebashi, Gumma Prefecture, Honshu, Japan, as well as conferences that Lt. Tallman has had in his capacity with various Japanese authorities with respect to this trial.

Judge Yamaguchi, during the proceedings so far pursued at the Maebashi District Court trial of Private Alan C. May, Private Kenneth J. Reynolds, Specialist Third Class Jessie J. Nordyke and Private Walter K. McKenzie, never employed any language indicative, directly, by implication or otherwise, of his alleged opinion that "the Japanese courts or he, the judge himself, recognize the obvious lack of due process of law in American sense" accorded to the accused in the case.

The issue as to the lack of due process was argued by the defense in the form of motion to dismiss the indictment at the second hearing of the case held on 3 December 1955. After the motion was entered, Judge Yamaguchi sought to obtain certain clarifications with respect to the motion. But at no time did he make the alleged statement.

At the subsequent third hearing which was held on 16 December 1955, in connection with the motion presented by the defense in the second hearing, Judge Yamaguchi informed the parties present that the court had "considered" the said motion and that he holds the ruling thereon "in abeyance" at that time. Likewise in this hearing, there was no mention of the statement alleged to have been made by the court.

The undersigned conferred with Judge Yamaguchi on more than three instances outside the hearings. At none of these conferences did Judge Yamaguchi assert, expressly or implicitly, that there was "obvious lack of due process" in the trial of any of the four accused.

At the third hearing on 16 December 1955, after the defense moved to have the pleading of the accused to the counts of indictment continued to the next hearing and the next hearing delayed in order to await the outcome of habeas corpus proceedings contemplated to be filed in the United States Federal Court to test the constitutionality of the Administrative Agreement, the prosecution renewed his objection for further stay of proceedings.

Judge Yamaguchi, having been advised by the defense that the contemplated suit would be the first of its kind to test the constitutionality of the amended Administrative Agreement, proposed vacating 23 December 1955 as the date of the fourth hearing. Defense asked for 60 days' delay and prosecution objected. Thereupon, Judge Yamaguchi, "considering the opinion of both prosecution and defense" vacated 23 December 1955 as the date of next hearing and proposed 25 January 1956 as the date of next hearing. At that point he stated to the defense that "no matter what will be the status or outcome of the decision by the United States Federal court with respect to the constitutionality of the Administrative Agreement," his court "will proceed with the trial at the next hearing." The parties agreed upon 10 February 1956 as the most convenient date for the Judge set that date as the fourth hearing. The court also set 24 February, and 9 March 1956 as dates of subsequent hearings.

Further deponent sayeth not.

K. Takenaka
K. TAKENAKA

JAN 20 1956
CITY OF NEW YORK
UNITED STATES OF AMERICA) SS:

and subscribed to before me, this 20th day of January 1956.

William R. Jochimsen
William R. Jochimsen
Vice Consul of the United States of America
duly commissioned and qualified

Service No. 2217.
Tariff No. J.E....
No Fee Prescribed.

Memorandum for the President

DEPARTMENT OF STATE,
Washington, February 27, 1952.

(Filed January 26, 1956)

Subject: Arrangements for United States Forces in Japan in
the Post-Peace Treaty Period

On January 18, 1952, we submitted to you a memorandum on this subject (Tab A). As a result of that memorandum you approved the negotiation of an Administrative Agreement with Japan as an executive agreement, approved a draft agreement as the basis for negotiations with the Japanese, and directed that we follow the principle of nondiscrimination between our treatment of Japan and our treatment of European countries in dealing with the difficult problem of criminal jurisdiction.

On January 22, 1952, you designated Mr. Dean Rusk as your Special Representative with the personal rank of Ambassador to negotiate the Administrative Agreement (Tab B). Before leaving for Japan, Mr. Rusk consulted with members of the appropriate Congressional Committees. With the assistance of Mr. Earl Johnson, Assistant Secretary of the Army, and in consultation with General Ridgway, he has been negotiating with the Japanese since January 29. He has kept our two Departments, and other agencies concerned, fully informed of his progress, and additional instructions with the concurrence of both Departments have been transmitted to him when the course of the negotiations made it necessary.

Agreement has now been reached with the Japanese upon the text of the Agreement (Tab C).

The negotiation with the Japanese has been of the nature that might reasonably be expected with a friendly sovereign power—difficult, but marked by mutual understanding and willingness to adjust to each other's point of view. These factors produced many changes in language, but have left undisturbed the basic principles of the agreement which was submitted to you on January 18 and which you approved.

The proposed Administrative Agreement (Tab C) is recommended by Mr. Rusk and his negotiating team, and by General

Ridgway with whom they have consulted fully throughout the negotiations. A summary of its chief features is attached as Tab D. It has the approval of the Department of State and of the Department of Defense. We therefore recommend that you authorize Mr. Rusk, as your Special Representative, to sign it for the United States. This authorization should be construed to allow for minor nonsubstantive changes in the text prior to final signature.

Enclosures: Tab A: Memorandum dated January 18, 1952. Tab B: Copy of letter dated January 22, 1952. Tab C: Text of Administrative Agreement. Tab D: Summary of Principal Provisions of the Administrative Agreement.

DEAN ACHESON.

WILLIAM C. FOSTER,
Acting Secretary of Defense.

Approved 2/27/52, 3:25 p. m., e. s. t.

HARRY S. TRUMAN.

Motion to strike the whole complaint

(Filed January 30, 1956)

Defendants respectfully move the Court for an order striking plaintiffs' complaint herein with leave for plaintiffs to file an amended complaint.

As grounds for this motion defendants allege that plaintiffs' complaint herein is in violation of Rules 8 (a) and 8 (e), F. R. C. P., in that it is not a short plain statement of the facts on which the claim is based, and that its averments are not simple, concise and direct; and that plaintiffs' complaint should be stricken because it consists throughout of redundant, impertinent, immaterial and scandalous matter, under Rule 12 (f).

LEO A. ROVER,
United States Attorney,
OLIVER GASCH,
Principal Assistant, United States Attorney,
EDWARD H. HICKEY,
Attorney, Department of Justice,
Attorneys for Defendants.

Oral opinion of the Court

(Filed April 9, 1956)

The COURT. As I indicated at the commencement of the argument, I took occasion to read the pleadings and the authorities that had been filed so I would understand fairly well the issues involved prior to the argument.

I wish to thank counsel very much for their very helpful arguments on both sides.

I think that in view of the time element involved in this case it is one I should not take under advisement, but I should decide it, and I am prepared to do so.

In my view of the matter the administrative agreement which was entered into was a valid exercise of the administrative power of the Executive and all of the rights granted by the administrative agreement have been accorded the plaintiffs in this case. As a matter of fact, they are rights which, absent the agreement they would have, in some respects, at any rate.

In my judgment there are no constitutional rights of the plaintiff which are being violated, and also, it seems to me that at a final hearing of the case the probabilities of the plaintiffs to have maintained the action are remote.

In addition to that it is my view there has been no showing of irreparable injury to the plaintiffs.

February 2, 1956.

Findings of fact and conclusions of law

(Filed February 10, 1956)

This cause having come on for hearing on the motion of plaintiffs for a preliminary injunction or a temporary stay order, and the Court having considered the pleadings, affidavits, exhibits, memoranda, and the arguments of counsel; and, in accordance with its oral opinion rendered on February 2, 1956, denying plaintiffs' motion for a preliminary injunction, the Court now makes the following Findings of Fact and enters the following Conclusions of Law:

FINDINGS OF FACT

1. The plaintiffs are American soldiers stationed in Japan.
2. The defendant Charles E. Wilson is Secretary of Defense of the United States; the defendant Wilber M. Brucker is Secretary of the Army of the United States.
3. On September 8, 1951, the Security Treaty was signed by the Governments of the United States of America and Japan. Ratification was advised by the United States Senate on March 20, 1952; the President of the United States ratified the Treaty on April 15, 1952; and it entered into force on April 28, 1952. Article III of the Security Treaty provides that: "The conditions which shall govern the disposition of armed forces of the United States of America in and about Japan shall be determined by administrative agreements between the two Governments."
4. On February 28, 1952, pursuant to Article III of the Security Treaty, the Administrative Agreement between the United States of America and Japan was signed and entered into force on April 28, 1952. Article XVII of the Administrative Agreement provided that: "Upon the coming into force with respect to the United States of the 'Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces,' signed at London on June 19, 1951, the United States will immediately conclude with Japan at the option of Japan, an agreement on criminal jurisdiction similar to the corresponding provisions of that agreement."
5. On September 29, 1953, the Protocol to Amend Article XVII of the Administrative Agreement which contains the presently existing jurisdictional arrangements relating to United States Armed Forces in Japan was signed by the Governments of Japan and the United States, and it entered into force on October 29, 1953.
6. The negotiation and execution of the Administrative Agreement of February 28, 1952, and the Protocol to Amend Article XVII of the Administrative Agreement of September 29, 1953, were validly authorized.

7. The Protocol to Amend Article XVII of the Administrative Agreement of September 29, 1953, gives the United States military authorities exclusive jurisdiction over acts which are offenses against United States law but not against Japanese law. Similarly, Japan has exclusive jurisdiction over acts done by members of United States forces which are offenses against its law but not against the law of the United States. In all other instances concurrent jurisdiction is provided for, with the United States having the primary right to exercise jurisdiction over offenses wholly against its security, property, or personnel, and over all offenses arising out of performance of official duty. With respect to all other offenses, Japan has primary jurisdiction, and the United States has the right to request waiver of such jurisdiction.

8. Whenever a member of the United States Armed Forces is prosecuted under the jurisdiction of Japan, the Protocol to Amend Article XVII of the Administrative Agreement of September 29, 1953, guarantees certain basic rights to American servicemen, which include the following: the right to a prompt and speedy trial; to be informed in advance of trial of the specific charge or charges against him; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to counsel of his own choice; to have the services of a competent interpreter; to have a representative of the Government of the United States present at the trial; as well as other rights secured to him by the Japanese Constitution and by administrative arrangements made pursuant to the Protocol by the respective Governments.

9. On October 5, 1955, the United States military authorities in Japan were notified by the Japanese Ministry of Justice that Japan intended to exercise her primary right to jurisdiction over the four plaintiffs. Under the administrative procedures which have been adopted to implement Article XVII of the Administrative Agreement of September 29, 1953, such ratification constituted a denial of the implied request for waiver of jurisdiction which exists in every case involving an offense over which Japan has primary jurisdiction. Following a thorough and complete review of the circumstances of this case, the United States military authorities determined that

there were no special factors in this case to indicate the plaintiffs would be denied a fair trial by the Japanese courts, and no further request for waiver was submitted.

10. On October 5, 1955, plaintiffs were indicted by the Japanese authorities for off-duty offenses against the criminal law of Japan, namely: obstructing justice, assault, and assault and battery.

11. On November 26, 1955, plaintiffs' trial commenced before a Japanese court, the District Court of Maebashi.

12. Plaintiffs' trial before the District Court of Maebashi is being conducted in full accordance with the procedures set forth in the terms of the Protocol to Amend Article XVII of the Administrative Agreement of September 29, 1953, and all of the rights granted by the Protocol, Japanese Constitution, and administrative arrangements made pursuant to the Protocol have been accorded plaintiffs in this case. Each of the plaintiffs is represented by privately retained civilian Japanese counsel, as well as civilian counsel of his own choice (an American lawyer resident in Japan) furnished at Government expense. A court-appointed interpreter is available for use of the accused at the trial. Two experienced Army observers, accompanied by their own interpreter, were designated to attend the trial and report any irregularities in the procedure depriving the accused of a fair trial.

13. On December 17, 1955, pursuant to plaintiffs' motion, the District Court of Maebashi granted a continuance of the trial until February 10, 1956, to permit plaintiffs to test the validity under United States law of the Protocol to Amend Article XVII of the Administrative Agreement of September 29, 1953, by institution of suit in an American court.

14. Pending completion of the criminal proceedings against plaintiffs, custody of plaintiffs has been retained by the United States military authorities. The customary procedure has been that the United States military authorities will continue to retain custody until all criminal appeal procedures before the Japanese courts are exhausted.

15. On January 12, 1956, plaintiffs filed this suit against defendants seeking an injunction and a declaratory judgment

that the Protocol to Amend Article XVII of the Administrative Agreement of September 29, 1953, is invalid and void in that it denies plaintiffs their constitutional right to a due process trial, and that it does not conform with the terms of the Security Treaty upon which it is based, and that it was not properly authorized and executed. Plaintiffs' motion for a preliminary injunction or a temporary stay order was filed January 13, 1956.

CONCLUSIONS OF LAW

1. The Protocol to Amend Article XVII of the Administrative Agreement of September 29, 1953, is valid in all respects.

2. Under generally accepted rules of international law, in the absence of such Agreement plaintiffs would be subject to the criminal jurisdiction of the Japanese court.

3. There has been no violation of plaintiffs' constitutional rights.

4. Plaintiffs do not show irreparable injury to justify the issuance of the preliminary injunction.

5. The probabilities of plaintiffs' ultimate success in this action are remote.

6. Plaintiffs' motion for a preliminary injunction or a temporary stay order is denied.

JOSEPH C. MCGARRAGHY,
Judge.

Order

(Filed February 10, 1956)

This cause having come on for hearing on the motion of plaintiffs for a preliminary injunction or a temporary stay order, and the Court having made Findings of Fact and Conclusions of Law with respect to said cause:

Now, therefore, it is by the Court this 10th day of February 1956 ordered:

That plaintiffs' motion for a preliminary injunction or a temporary stay order, be and it hereby is, denied.

JOSEPH C. MCGARRAGHY,
Judge.

Stipulation

(Filed February 23, 1956)

The parties hereto, by their respective attorneys, stipulate as follows:

1. Plaintiffs will file, within five days from the filing of this stipulation, an amended complaint in the form hereto attached, and thereupon the motion heretofore filed by defendants to strike the complaint shall be deemed withdrawn.

2. Defendants will file, within fifteen days from the filing of this stipulation, an answer to the amended complaint and a motion for summary judgment.

3. In view of the fact that plaintiffs' motion for a temporary injunction or stay order was fully briefed and argued to the Court, and the Court denied that motion on February 10, 1956, this cause shall be deemed submitted to the Court, without further briefs or arguments, upon defendants' motion for summary judgment. The affidavits and certified copies of documents; i. e., affidavit of Howard S. Levie (with Annexes A through H attached thereto); affidavit of Alan B. Todd (with Inclosures 1 and 2 thereto); affidavit of C. Robert Bard; affidavit of Shelton B. Biles (with Inclosures 1 and 2 attached thereto); affidavit of Richard Reichmann; affidavit of John J. Douglass; affidavit of Robert G. Tallman (with Inclosures 1, 2, and 3 thereto); affidavit of Victor A. DeFiori (with Inclosure 1 thereto); affidavit of Ko Takenaka; second affidavit of Shelton B. Biles; third affidavit of Shelton B. Biles (with Inclosures 1 through 6 thereto); certified copies of statements obtained by personnel of the Office of Provost Marshal; and certified copy of Memorandum for the President, dated February 27, 1952, submitted by defendants in opposition to plaintiffs' motion for a temporary injunction or stay order shall be deemed filed in support of defendants' motion for summary judgment; and the verified original complaint and the affidavit of Urban A. Lavery submitted by plaintiffs in support of their motion

for a temporary injunction or stay order shall be deemed filed in opposition to defendants' motion for summary judgment.

WILLIAM P. MACCRACKEN, Jr.,
Attorney for Plaintiffs,

LEO A. ROVER,
United States Attorney,

EDWARD H. HICKEY,
Attorney, Department of Justice,
Attorneys for Defendants.

Amended complaint

(Filed February 24, 1956)

The Plaintiffs, Alan C. May, Private, U. S. A., Walter R. McKenzie, Corporal, U. S. A., Kenneth J. Reynolds, Private, U. S. A., Jesse Nordyke, Private, U. S. A., by their attorneys, pursuant to stipulation, file their Amended Complaint for Declaratory Judgment and other relief and allege as follows:

I. PARTIES

1. The Plaintiffs, and each of them, are native born adult citizens of the United States, who are on active duty as members of the Army and have been, by the authority of the Defendants and those acting under them, sent to Japan where they are now serving as soldiers in the Armed Forces of the United States.

2. The Defendant, Charles E. Wilson, is now the duly appointed and acting Secretary of Defense, and as such, through military channels, exercises authority and command over the persons and bodies of the Plaintiffs, and each of them, as members of the Armed Forces of the United States.

The Defendant Wilber M. Brucker is now the duly appointed and acting Secretary of the Army, and as such, through military channels, exercises authority and command over the persons and bodies of the Plaintiffs, and each of them, as members of the Army of the United States, subject to authority vested in his Co-Defendant Charles E. Wilson.

II. JURISDICTION

3. This Amended Complaint is filed and these proceedings are instituted under the Declaratory Judgment Act of June 25, 1948, c. 646, 62 Stat. 964, as amended, Title 28, U. S. C. A., Secs. 2201, 2202, and the Administrative Procedure Act of the United States of June 11, 1946, c. 324, Sec. 10, 60 Stat. 243, as amended. (Title 5, U. S. C. A., Sec. 1009).

III. THE NATURE OF THE CONTROVERSY

4. During the month of September 1955, the Plaintiffs while visiting in the City of Maebashi, Japan, found it necessary to defend themselves against attacks by a much larger group of Japanese civilians, including members of the local Japanese Police Force. Physical injuries were sustained by these Plaintiffs, as well as by Japanese civilians and Police, but none of said injuries were permanent or serious.

5. The Plaintiffs returned voluntarily to their respective stations, and subsequently demands were made by the Japanese authorities upon the subordinate officers of the Defendants that Plaintiffs be required to appear and stand trial in a Japanese Criminal Court in the City of Maebashi under Japanese domestic Law. At various times during the months of October, November, and December 1955, the Defendants, acting through their subordinate officers in Japan, compelled the Plaintiffs and each of them, to stand trial in the Japanese Criminal Court in the City of Maebashi, which trial has not been concluded.

6. Prior to September 1955, to wit on or about the 29th day of September 1953, the Department of State of the United States entered into an Administrative Agreement, which purports to require these Defendants to compel any members of the Armed Forces stationed in Japan to submit to trial in the Criminal Courts of Japan upon any charges which may be preferred against such members of the Armed Forces, irrespective of whether they constitute violations under the Laws of the United States and without regard to many of the safeguards provided by the Constitution of the United States for its citizens charged with crime, and in disregard of Article I, Sec. 8,

Clause 14 of the Constitution vesting in Congress the power to make rules for the Government and regulation of the land and naval forces, the Acts of Congress governing the trials of members of the Armed Forces charged with offenses commonly known as "Uniform Code of Military Procedure", Act of May 5, 1950, c. 169, Sec. 1, 64 Stat., 108 (Title 50, U. S. C. A., Sec. 551-736).

7. Said Administrative Agreement was not entered into by and with the advice and consent of the Senate of the United States as required by Article II, Sec. 8 (2) of the Constitution of the United States, and therefore is unconstitutional and not binding upon these Defendants and their actions in compelling these Plaintiffs to submit to the jurisdiction of a Criminal Court of Japan are in violation of the rights of the Plaintiffs guaranteed by the United States Constitution, and the Act of Congress, known as the "Uniform Code of Military Procedure".

8. If, as the result of said trial, these Plaintiffs are convicted and sentenced to jail or prison, they will be required to serve their sentences in a Japanese prison, which constitutes cruel, and unusual punishment in violation of the 8th Amendment to the Constitution of the United States.

9. These Defendants in similar cases have delivered members of the Armed Forces to the Japanese authorities to serve sentences in Japanese penal institutions, who according to the report of the defendants official observers were not afforded a fair Trial, and unless restrained by the order of this Court, they will, if these Plaintiffs, notwithstanding the fact they acted solely in self-defense, are convicted as a result of their so-called trial before Japanese Courts, forcibly deliver them to the Japanese authorities and the jurisdiction of this Court will thereby be defeated by reason of the fact that the Defendants will thereafter be powerless to comply with any Order which this Court might enter for the relief of these Plaintiffs, thus causing this case to become moot.

IV. PRAYER

Wherefore Plaintiffs pray:

1. That the so-called Agreement of September 1953 made by the Department of State with Japan, as herein set forth,

be declared to be and held to be entirely void and illegal so far as it purports to confer jurisdiction on the Criminal Courts of Japan to try and punish these Plaintiffs or other members of the Armed Forces of the United States, and to be in violation of the Constitution and Laws of the United States, insofar as said Agreement purports to authorize or require the above named Defendants, or either of them (and the Officers of the Armed Forces of the United States acting under their direction and control in Japan) to command and order the Plaintiffs, or any of them, involuntarily, to appear before and attend at the future sessions of the Japanese Criminal Court at Mae-bashi, Japan, and to submit to the jurisdiction of said Court for trial under the domestic Laws of Japan, and, if convicted, to submit to cruel and unusual punishment by incarceration in the penal institutions of Japan in violation of the 8th Amendment to the Constitution of the United States.

2. That pending the final disposition of this case, the Defendants be enjoined and restrained (and all other Officers of the Armed Forces of the United States in Japan acting under the direction and control of said Defendants) from taking any steps or performing any acts designed or intended to carry out or enforce, as against these Plaintiffs, or any of them, any of the provisions of the so-called Agreement with Japan hereinabove more particularly described.

3. That the Court enter an Order or Decree, by way of a mandatory injunction, directing and commanding the Defendants and each of them, to issue forthwith appropriate orders and commands, through military channels, to their subordinate officers in the Armed Forces in Japan, directing them in turn to refrain and desist, in the future, from compelling these Plaintiffs, or any of them, or any members of the Armed Forces in Japan, against their will to appear before the Criminal Courts in Japan for trial under the domestic Law of Japan.

4. That those Plaintiffs may be granted the right of judicial review of the action of the Defendants, and each of them, and of their subordinates, in respect of the matters and things charged against the Defendants and their subordinates in this

Amended Complaint, as such right of Review is provided in the Administrative Procedure Act of the United States, as hereinbefore set forth.

5. That the Plaintiffs have such other and further general and different relief as the nature of the case may require, and as the Court may deem proper in the premises.

URBAN A. LAVERY,
of Chicago, Illinois, and
 WILLIAM P. MACCRACKEN, Jr.,
of Washington, D. C.,
Attorneys for Plaintiffs.

BEN BRUCE BLAKENEY,
Tokyo, Japan,
 FRANK H. SCOLINOS,
Tokyo, Japan,
 MURRAY SPRUNG,
Tokyo, Japan,
Attorneys for these Plaintiffs in Japan.

DISTRICT OF COLUMBIA, ss:

William P. MacCracken, Jr., being first duly sworn deposes and says that he is one of the Attorneys in the above entitled action, and makes this affidavit on behalf of the Plaintiffs due to the fact that they are outside the continental limits of the United States. The undersigned further states that he has read the above and foregoing Amended Complaint and he believes that the matters and things therein set out, and that all matters of fact therein charged are true and correct.

WILLIAM P. MACCRACKEN, Jr.

Subscribed and sworn to before me this 23d of February 1956.

HARRY M. HULL,
Clerk.

By DORIS C. MEICE,
Deputy Clerk, Notary Public.

Answer

(Filed March 9, 1956)

Now come the defendants, Charles E. Wilson, Secretary of Defense of the United States, and Wilbur M. Brucker, Secretary of the Army of the United States, and in answer to the amended complaint say as follows:

FIRST DEFENSE

1. Answering paragraph 1 of the amended complaint, defendants admit the allegations contained therein, except that defendants state that they are without knowledge or information sufficient to form a belief as to the allegation that plaintiffs are native born citizens of the United States.

2. Answering paragraph 2 of the amended complaint, defendants admit the allegations contained therein.

3. Answering paragraph 3 of the amended complaint, defendants deny the allegations contained therein.

4. Answering paragraph 4 of the amended complaint, defendants admit that the incident referred to therein occurred in Maebashi City, Japan in September 1955, and that as a result of such incident physical injuries were sustained by plaintiffs May and Reynolds as well as Japanese civilians and police. Defendants state that they are without knowledge or information sufficient to form a belief as to whether the injuries inflicted upon the various participants are permanent or not. Defendants deny that none of such injuries was serious, and state that as the result of injuries received, several of the Japanese policemen required medical treatment for a period of approximately from one to three weeks.

Defendants state that the facts concerning the nature of the incident referred to in paragraph 4 of the amended complaint and the nature and extent of plaintiffs' participation therein are presently under investigation by a Japanese Court, the District Court of Maebashi, and have not yet been finally established. However, affidavits filed by defendants in opposition to plaintiffs' Motion for Preliminary Injunction or a Temporary

Stay Order and expressly made part of this answer show the following facts, among others: Plaintiffs were indicted by the Japanese authorities on October 5, 1955 for criminal offenses under the domestic law of Japan, namely obstructing justice, assault, and battery and assault. These charges arose out of plaintiffs' participation in a fight with Japanese police which occurred on the night of September 4, 1955, in an amusement arcade in Maebashi City, Honshu, Japan. At the time three of the plaintiffs were off duty; plaintiff May was AWOL from the Army camp where he had been restricted to quarters for prior offenses. The incident occurred when a Japanese policeman who attempted to prevent the destruction of two pinball machines was assaulted by a large group at least partially composed of American soldiers, including plaintiffs. During the altercation, the four plaintiffs allegedly struck and injured the policeman. With the arrival of additional police, plaintiffs escaped.

Except to the extent qualified or admitted by the above statement, the allegations of paragraph 4 are denied.

5. Answering paragraph 5 of the amended complaint, defendants admit the allegations contained therein, except that defendants deny that plaintiffs May, Reynolds and McKenzie returned voluntarily to their respective stations. Defendants aver that following the incident which occurred in Maebashi City on the night of September 4, 1955, plaintiff May was taken into custody by the United States Military Police as he was attempting to climb a wall to gain entrance to the American military installation at Camp Stilwell; plaintiffs Reynolds and McKenzie were apprehended by the Japanese police in Maebashi City and subsequently transferred to the custody of the United States Military Police.

Further answering paragraph 5 of the amended complaint, defendants state that plaintiffs were indicted by the Japanese authorities on October 5, 1955, on charges of obstructing justice, assault, and battery and assault. On October 5, 1955, the United States military authorities in Japan were notified by the Japanese Ministry of Justice that Japan intended to exercise her primary right to jurisdiction over the four plaintiffs pursuant to the Protocol to Amend Article XVII of the Ad-

ministrative Agreement of September 29, 1953. Under the administrative procedures which have been adopted to implement Article XVII of the Administrative Agreement of September 29, 1953, such notification constituted a denial of the implied request for waiver of jurisdiction which exists in every case involving an offense over which Japan has primary jurisdiction. Following a thorough and complete review of the circumstances of this case, the United States military authorities determined that there were no special factors in this case to indicate the plaintiffs would be denied a fair trial by the Japanese courts, and no further request for waiver was submitted.

On November 26, 1955, plaintiffs' trial commenced before a Japanese court, the District Court of Maebashi. On December 17, 1955, pursuant to plaintiffs' motion, the District Court of Maebashi granted a continuance of the trial until February 10, 1956, to permit plaintiffs to test the validity under United States law of the Protocol to Amend Article XVII of the Administrative Agreement of September 29, 1953, by institution of suit in an American court. On February 10, 1956, plaintiffs' trial reconvened.

6. Answering paragraph 6 of the amended complaint, defendants deny the allegations contained therein except that defendants admit that the jurisdictional arrangements relating to United States armed forces in Japan are contained in the Protocol to Amend Article XVII of the Administrative Agreement of September 29, 1953. Defendants say that the Protocol to Amend Article XVII of the Administrative Agreement of September 29, 1953, speaks for itself, and defendants respectfully refer the Court to said Protocol (a copy of which is found as Annex C to the affidavit of Col. Howard S. Levie, Chief of the International Affairs Division, Office of the Judge Advocate General, Department of the Army) submitted in opposition to plaintiffs' Motion for a Preliminary Injunction or Temporary Stay Order and expressly made part of this answer for the full meaning, purport and effect thereof.

Defendants further aver that pursuant to the Protocol to Amend Article XVII of the Administrative Agreement whenever a member of the United States Armed Forces is prosecuted

under the jurisdiction of Japan, said Protocol guarantees certain basic rights to American servicemen, which include the following: the rights to a prompt and speedy trial; to be informed, in advance of trial, of the specific charge or charges made against him; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, if they are within the jurisdiction of Japan; to have legal representation of his own choice for his defense or to have free or assisted legal representation under the conditions prevailing for the time being in Japan; to have the services of a competent interpreter; to communicate with a representative of the Government of the United States and to have such a representative present at his trial. Further safeguards are stipulated for the protection of the accused by the Agreed Official Minutes regarding the Protocol to Amend Article XVII of the Administrative Agreement by the "Agreed Views"; and by the Japanese Constitution; and defendants respectfully refer the Court to said "Official Minutes", "Agreed Views" (found as Annexes D and E to the affidavit of Col. Howard S. Levie) and the Japanese Constitution (set forth in relevant part in the affidavit of Col. Howard S. Levie, page 6) for the full meaning, purport and effect thereof.

Plaintiffs' trial before the District Court of Maebashi has been and presently is being conducted in full accordance with the procedures set forth in the terms of the Protocol to Amend Article XVII of the Administrative Agreement and all of the rights granted by the Protocol, Japanese Constitution, and administrative arrangements made pursuant to the Protocol have been accorded plaintiffs in this case.

Further answering paragraph 6 of the amended complaint, defendants state that the Administrative Agreement of February 28, 1952, which by its terms provides for the Protocol to Amend Article XVII of the Administrative Agreement was signed for the Government of the United States of America by Dean Rusk, who was designated by the President as his special representative with the rank of Ambassador to negotiate and execute the agreement on behalf of the United States. Submitted in opposition to plaintiffs' Motion for Preliminary Injunction or a Temporary Stay Order and expressly made part

of this answer is a certified copy of an official document showing that the President approved the agreement and authorized Mr. Rusk to execute it. The Protocol itself was signed by John M. Allison, in his capacity as Ambassador Extraordinary and Plenipotentiary of the United States of America.

7. Answering paragraph 7 of the amended complaint, defendants deny the allegations contained therein.

Defendants state that the Protocol to Amend Article XVII of the Administrative Agreement of September 29, 1953, was negotiated under the Security Treaty signed by the Governments of the United States of America and Japan on September 8, 1951. Ratification of the Security Treaty was advised by the United States Senate on March 20, 1952; the President of the United States ratified the Treaty on April 15, 1952; and it entered into force on April 28, 1952. Article III of the Security Treaty provides that: "The conditions which shall govern the disposition of armed forces of the United States of America in and about Japan shall be determined by administrative agreements between the two Governments."

On February 28, 1952, pursuant to Article III of the Security Treaty, the Administrative Agreement between the United States of America and Japan was signed and entered into force on April 28, 1952. Article XVII of the Administrative Agreement provided that: "Upon the coming into force with respect to the United States of the 'Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces,' signed at London on June 19, 1951, the United States will immediately conclude with Japan at the option of Japan, an agreement on criminal jurisdiction similar to the corresponding provisions of that agreement."

On September 29, 1953, following the coming into force with respect to the United States of the Agreement between the Parties to the North Atlantic Treaty Regarding the Status of their Forces on August 23, 1953, the Protocol to Amend Article XVII of the Administrative Agreement which contains the presently existing jurisdictional arrangements relating to United States Armed Forces in Japan was signed by the Governments of Japan and the United States, and it entered into force on October 29, 1953.

8. Answering paragraph 8 of the amended complaint, defendants deny the allegations contained therein except that defendants admit that if plaintiffs are convicted and sentenced to prison by the District Court of Maebashi, and such conviction and sentence is upheld on appeal by the Japanese courts, such sentence unless suspended must be served in a Japanese penal institution.

9. Answering paragraph 9 of the amended complaint, defendants deny the allegations contained therein except that defendants admit that this court could have no control over plaintiffs once they are no longer in the custody of the United States.

Additional defenses

SECOND DEFENSE

The Protocol to Amend Article XVII of the Administrative Agreement of September 29, 1953, is valid in all respects.

THIRD DEFENSE

The actions of the defendants complained of herein were in compliance with the Constitution, laws of the United States, Administrative Agreement and applicable Treaties.

FOURTH DEFENSE

The amended complaint does not present a justiciable controversy over which the Court has jurisdiction.

FIFTH DEFENSE

The amended complaint fails to state a claim against defendants upon which relief can be granted.

LEO A. ROVER,

United States Attorney.

EDWARD H. HICKEY,

Attorney, Department of Justice.

DONALD B. MACGUINEAS,

Attorney, Department of Justice.

BEATRICE M. ROSENHAIN,

Attorney, Department of Justice.

Defendants' motion for summary judgment

(Filed March 9, 1956)

Now come the defendants, Charles E. Wilson, Secretary of Defense of the United States, and Wilbur M. Brucker, Secretary of the Army of the United States, and upon the amended complaint, the answer, the affidavits and certified copies of documents submitted by defendants in opposition to plaintiffs' motion for a temporary injunction or a stay order which affidavits and certified copies are expressly made a part of this motion and the stipulation of the parties filed February 23, 1956, move this Court under Rule 56 of the Federal Rules of Civil Procedure for summary judgment on the ground that there is no genuine issue as to any material fact and that defendants are entitled to judgment as a matter of law.

LEO A. ROVER,

United States Attorney.

EDWARD H. HICKEY,

Attorney, Department of Justice.

DONALD B. MACGUINEAS,

Attorney, Department of Justice.

BEATRICE M. ROSENHAIN,

*Attorney, Department of Justice.**Order*

(Filed March 12, 1956)

This cause having been submitted on the motion of defendants for summary judgment and the Court having considered all the pleadings, affidavits and certified copies of documents, exhibits, stipulation, and memoranda of law submitted herein:

Now, therefore, it is by the Court this 12th day of March 1956 ordered:

That the defendants' motion for summary judgment be, and it is hereby granted.

JOSEPH C. MCGARRAGHY,

Judge.

Motion for leave to prosecute appeal in forma pauperis

(Filed March 22, 1956)

Now come the above named plaintiffs by William P. MacCracken, Jr., their attorney, and move the Court to enter an Order to permit them to prosecute an Appeal from the Order entered herein on the 10th day of February 1956, denying their motion for a preliminary injunction or a temporary stay order, and an appeal from the summary judgment entered herein on the 12th day of March 1956, in Forma Pauperis, said motion being supported by the several affidavits of the said plaintiffs that they are unable to pay the costs of said appeal or to give security therefor.

Dated this 22nd day of March 1956.

William P. MacCracken, Jr.,

WILLIAM P. MACCRACKEN, JR.,

Attorney for Appellants, Alan C. May, Walter R. McKenzie, Kenneth J. Reynolds, and Jesse Nordyke, 1152 National Press Building, Washington 4, D. C.

Affidavit of Alan C. May

AFFIDAVIT OF POVERTY

(Filed March 22, 1956)

WITH THE ARMY OF THE UNITED STATES,
At Maebashi, Japan,

ss:

The undersigned affiant, Private Alan C. May, having personally appeared before me, an officer of the Judge Advocate General Corps of the United States Army, and having first been duly sworn by me, on oath deposes and says:

1. The affiant is one of the plaintiffs in the above-entitled action, and is a citizen of the United States of America, is temporarily serving as a Private in the Army of the United States, now stationed in Japan.

2. The nature of the above-entitled action is a declaratory-judgment proceeding to test the validity of the certain Administrative Agreement between the United States of America and Japan, under which the affiant charges that he is being unlawfully compelled by the defendants to submit to the jurisdiction of the criminal courts of Japan, all as charged in the complaint filed in such action.

3. The District Court, after a hearing on the merits, has entered a final judgment by which it has ruled adversely to the charges and contentions of the affiant in his complaint, and the affiant desires to appeal from that judgment to the United States Court of Appeals for the District of Columbia; and the affiant states that he has been advised by his attorneys, and believes, that he is entitled to the redress and relief prayed in his complaint.

4. The nature of the proposed appeal is that the affiant contends and urges that the judgment of the District Court above mentioned denies the affiant his right to due process of law under the Constitution of the United States of America, and that in other respects such judgment contravenes the Constitution of the United States.

5. The affiant states that he has no property whatever, and is unable to pay any of the costs or charges either in the District Court or in the Court of Appeals or to give any security therefor.

6. The affiant makes this affidavit for the purpose of availing himself of the rights and privileges in such case as provided by § 1915 of Title 28 of the United States Code.

Wherefore, the affiant prays that he may have leave to prosecute his appeal aforementioned to the Court of Appeals, in forma pauperis, pursuant to such statute.

Done this 9th day of March 1956.

Alan C. May,
ALAN C. MAY.

WITH THE ARMY OF THE UNITED STATES,

At Maebashi, Japan, ss:

Before me, the undersigned authority duly authorized to administer oaths, personally appeared Private Alan C. May, who is known to me to be a person accompanying and serving

with the Army of the United States and to be the identical person who is described in and who executed the foregoing affidavit, and acknowledged to me that he executed it freely and voluntarily for the uses and purposes therein set forth, and that the contents thereof are true.

Done this 9th day of March 1956.

Robert G. Tallman,
ROBERT G. TALLMAN,
1st Lieutenant, JAGC.

Affidavit of Walter R. McKenzie

(Filed March 22, 1956)

AFFIDAVIT OF POVERTY

WITH THE ARMY OF THE UNITED STATES,

At Maebashi, Japan, ss:

The undersigned affiant, Private Walter R. McKenzie, having personally appeared before me, an officer of the Judge Advocate General Corps of the United States Army, and having first been duly sworn by me, on oath deposes and says:

1. The affiant is one of the plaintiffs in the above-entitled action, and is a citizen of the United States of America, is temporarily serving as a Private in the Army of the United States, now stationed in Japan.

2. The nature of the above-entitled action is a declaratory-judgment proceeding to test the validity of a certain Administrative Agreement between the United States of America and Japan, under which the affiant charges that he is being unlawfully compelled by the defendants to submit to the jurisdiction of the criminal courts of Japan, all as charged in the complaint filed in such action.

3. The District Court, after a hearing on the merits, has entered a final judgment by which it has ruled adversely to the charges and contentions of the affiant in his complaint, and the affiant desires to appeal from that judgment to the United States Court of Appeals for the District of Columbia; and the affiant states that he has been advised by his attorneys, and

believes, that he is entitled to the redress and relief prayed in his complaint.

4. The nature of the proposed appeal is that the affiant contends and urges that the judgment of the District Court above mentioned denies the affiant his right to due process of law under the Constitution of the United States of America, and that in other respects such judgment contravenes the Constitution of the United States.

5. The affiant states that he has no property whatever, and is unable to pay any of the costs or charges either in the District Court or in the Court of Appeals or to give any security therefor.

6. The affiant makes this affidavit for the purpose of availing himself of the rights and privileges in such case as provided by § 1915 of Title 28 of the United States Code.

Wherefore, the affiant prays that he may have leave to prosecute his appeal aforementioned to the Court of Appeals, in forma pauperis, pursuant to such statute.

Done this 9th day of March 1956.

Walter R. McKenzie.

WALTER R. MCKENZIE.

WITH THE ARMY OF THE UNITED STATES,

At Maebashi, Japan, ss:

Before me, the undersigned authority duly authorized to administer oaths, personally appeared Private Walter R. McKenzie, who is known to me to be a person accompanying and serving with the Army of the United States and to be the identical person who is described in and who executed the foregoing affidavit, and acknowledged to me that he executed it freely and voluntarily for the uses and purposes therein set forth, and that the contents thereof are true.

Done this 9th day of March 1956.

Robert G. Tallman,

ROBERT G. TALLMAN,

1st Lieutenant, JAGC.

Affidavit of Jesse Nordyke

AFFIDAVIT OF POVERTY

(Filed March 22, 1956)

WITH THE ARMY OF THE UNITED STATES,

At Maebashi, Japan, ss:

The undersigned affiant, Specialist 3d Class Jesse Nordyke, having personally appeared before me, an officer of the Judge Advocate General Corps of the United States Army, and having first been duly sworn by me, on oath deposes and says:

1. The affiant is one of the plaintiffs in the above-entitled action, and is a citizen of the United States of America, is temporarily serving as a Private in the Army of the United States, now stationed in Japan.

2. The nature of the above-entitled action is a declaratory-judgment proceeding to test the validity of a certain Administrative Agreement between the United States of America and Japan, under which the affiant charges that he is being unlawfully compelled by the defendants to submit to the jurisdiction of the criminal courts of Japan, all as charged in the complaint filed in such action.

3. The District Court, after a hearing on the merits, has entered a final judgment by which it has ruled adversely to the charges and contentions of the affiant in his complaint, and the affiant desires to appeal from that judgment to the United States Court of Appeals for the District of Columbia; and the affiant states that he has been advised by his attorneys, and believes, that he is entitled to the redress and relief prayed in his complaint.

4. The nature of the proposed appeal is that the affiant contends and urges that the judgment of the District Court above mentioned denies the affiant his right to due process of law under the Constitution of the United States of America, and that in other respects such judgment contravenes the Constitution of the United States.

5. The affiant states that he has no property whatever, and is unable to pay any of the costs or charges either in the District

Court or in the Court of Appeals or to give any security therefor.

6. The affiant makes this affidavit for the purpose of availing himself of the rights and privileges in such case as provided by § 1915 of Title 28 of the United States Code.

Wherefore, the affiant prays that he may have leave to prosecute his appeal aforementioned to the Court of Appeals, in forma pauperis, pursuant to such statute.

Done this 9th day of March 1956.

Jesse Nordyke
JESSE NORDYKE.

WITH THE ARMY OF THE UNITED STATES,

At Maebashi, Japan, ss:

Before me, the undersigned authority duly authorized to administer oaths, personally appeared SP-3 Jesse Nordyke, who is known to me to be a person accompanying and serving with the Army of the United States and to be the identical person who is described in and who executed the foregoing affidavit, and acknowledge to me that he executed it freely and voluntarily for the uses and purposes therein set forth, and that the contents thereof are true.

Done this 9th day of March 1956.

Robert G. Tallman,
ROBERT G. TALLMAN,
1st Lieutenant, JAGC.

Affidavit of Kenneth J. Reynolds

AFFIDAVIT OF POVERTY

(Filed March 22, 1956)

WITH THE ARMY OF THE UNITED STATES,

At Maebashi, Japan, ss:

The undersigned affiant, Private Kenneth J. Reynolds, having personally appeared before me, an officer of the Judge Advocate General Corps of the United States Army, and having first been duly sworn by me, on oath deposes and says:

1. The affiant is one of the plaintiffs in the above-entitled action, and is a citizen of the United States of America, is temporarily serving as a Private in the Army of the United States, now stationed in Japan.

2. The nature of the above-entitled action is a declaratory-judgment proceeding to test the validity of a certain Administrative Agreement between the United States of America and Japan, under which the affiant charges that he is being unlawfully compelled by the defendants to submit to the jurisdiction of the criminal courts of Japan, all as charged in the complaint filed in such action.

3. The District Court, after a hearing on the merits, has entered a final judgment by which it has ruled adversely to the charges and contentions of the affiant in his complaint, and the affiant desires to appeal from that judgment to the United States Court of Appeals for the District of Columbia; and the affiant states that he has been advised by his attorneys, and believes, that he is entitled to the redress and relief prayed in his complaint.

4. The nature of the proposed appeal is that the affiant contends and urges that the judgment of the District Court above mentioned denies the affiant his right to due process of law under the Constitution of the United States of America, and that in other respects such judgment contravenes the Constitution of the United States.

5. The affiant states that he has no property whatever, and is unable to pay any of the costs or charges either in the District Court or in the Court of Appeals or to give any security therefor.

6. The affiant makes this affidavit for the purpose of availing himself of the rights and privileges in such case as provided by § 1915 of Title 28 of the United States Code.

Wherefore, the affiant prays that he may have leave to prosecute his appeal aforementioned to the Court of Appeals, in forma pauperis, pursuant to such statute.

Done this 9th day of March 1956.

Kenneth J. Reynolds.
KENNETH J. REYNOLDS.

WITH THE ARMY OF THE UNITED STATES,

At Maebashi, Japan, ss:

Before me, the undersigned authority duly authorized to administer oaths, personally appeared Private Kenneth J. Reynolds, who is known to me to be a person accompanying and serving with the Army of the United States and to be the identical person who is described in and who executed the foregoing affidavit, and acknowledged to me that he executed it freely and voluntarily for the uses and purposes therein set forth, and that the contents thereof are true.

Done this 9th day of March 1956.

Robert G. Tallman,

ROBERT G. TALLMAN,

1st Lieutenant, JAGC.

Order granting leave to prosecute appeal in forma pauperis

(Filed March 23, 1956)

This cause having come on to be heard on motion of the plaintiffs Alan C. May, Walter R. McKenzie, Kenneth J. Reynolds, and Jesse Nordyke, that they be authorized to prosecute an appeal from the Order entered herein on the 10th day of February 1956, denying their motion for a temporary stay order and from the summary judgment entered herein on the 12th day of March 1956, in Forma Pauperis, said motion being supported by affidavits of each of the said plaintiffs that each is unable to pay the costs of said appeal or give security therefor, and it appearing to the Court that said motion should be granted, it is

Ordered, that the plaintiffs appellants Alan C. May, Walter R. McKenzie, Kenneth J. Reynolds, and Jesse Nordyke, be and they are hereby permitted to prosecute said appeal in Forma Pauperis.

JAMES C. MCGARRAGHY,

United States District Judge.

Dated this 23d day of March 1956.

Notice of Appeal

(Filed March 28, 1956)

Notice is hereby given that Alan C. May, Private, U. S. A., Walter R. McKenzie, Corporal, U. S. A., Kenneth J. Reynolds, Private, U. S. A., Jesse Nordyke, Private, U. S. A., plaintiffs above named, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the Order denying plaintiffs' motion for a temporary stay order, entered in this action on the 10th day of February 1956, and from the Summary Judgment dismissing this action, entered in favor of the defendants and against the plaintiffs, on the 12th day of March 1956.

Dated this 28th day of March 1956.

(S) WILLIAM P. MACCRACKEN, Jr.

William P. MacCracken, Jr.,

Attorney for Appellants Alan C. May, Walter R. McKenzie, Kenneth J. Reynolds, and Jesse Nordyke, 1152 National Press Building, Washington 4, D. C.

